

21-1920-cr

United States Court of Appeals
for the
Second Circuit

UNITED STATES OF AMERICA,

Appellee,

— v. —

ARI TEMAN, AKA Sealed Defendant 1,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX
Volume 3 of 11 (Pages A-241 to A-480)

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K1LVTEM3

1 to raise, if you don't have the time to write the usual
2 letter -- and as an aside, I very much have appreciated the
3 letter-writing I've gotten on each side already. As you can
4 tell, I dig into that immediately and try to resolve things
5 promptly; because my goal is to allow you to be the masters of
6 your cases and to know what my rulings are.

7 If you're unable in the time available to write one of
8 those letters, at least shoot me an email so that my chambers
9 and I, when we get in very early tomorrow morning, have some
10 idea what's coming from each of you. Okay?

11 MR. BHATIA: Understood.

12 THE COURT: All right. Very good.

13 Anything further from the government before we adjourn
14 for the afternoon?

15 Sorry, from the government.

16 MR. DiRUZZO: I'm sorry.

17 (Counsel conferred)

18 MR. BHATIA: Your Honor, earlier when we had met this
19 morning, your Honor had referenced a letter on a few different
20 topics. Were you still looking for a letter on those topics,
21 your Honor? I think one of them was whether notice was
22 required, whether there's discovery to be done on the advice of
23 counsel issue.

24 THE COURT: No, no, I think we're covered on that.

25 My crack staff has run down the law on notice. And

K1LVTEM3

1 the thrust of it is that while there isn't an affirmative
2 freestanding duty in the federal rules, courts have broad
3 discretion to impose notice and disclosure requirements outside
4 the rules, including with respect to advice of counsel. I
5 could read into the record a number of citations, but I don't
6 think anyone is disagreeing.

7 I think, in effect, what we did today discharged
8 exactly those -- that authority. In effect, with the extra day
9 here and the process I've used at least to help break the
10 logjam with respect to documents, you are now on notice that
11 the defense is coming; you've been given a preview that it is
12 substantially anchored in oral as opposed to substantially
13 written communications; you have a notion of where they are
14 going; and you've got, I think, a full production of documents
15 from the parties to the privilege relationship. We've also
16 confirmed the waiver of the privilege to the full contours of
17 this case.

18 So I think, in practice, I have come to discharge the
19 authority I have here in a way that seems proportionate to the
20 challenge. I don't need any more law from you, unless there's
21 an issue you've spotted.

22 MR. BHATIA: That's good. I just wanted to make sure
23 you weren't waiting for a letter that we didn't file.

24 THE COURT: You're caught up.

25 Okay. Defense, anything from you?

K1LVTEM3

1 MR. GELFAND: Just two discrete, completely unrelated
2 to this, evidentiary issues I just wanted to make the Court
3 aware of just so that the Court, as requested, is not
4 essentially caught in the middle of testimony without advanced
5 notice.

6 There are two records that originate from government
7 premarked exhibits that I would anticipate they intend to
8 introduce into evidence. One set of records involve
9 "surveillance photos" from various bank cameras.

10 THE COURT: Yes.

11 MR. GELFAND: My understanding is that the government
12 intends to -- the government conceives of these -- and I don't
13 want to speak for the government -- as "business records,"
14 which we don't dispute that they came -- meaning the
15 documents -- from Bank of America. We're not wasting the
16 Court's time on things.

17 There's additional foundation rooted in the case law
18 that has to be set before any photographic evidence is accepted
19 into the record. And if the government intends to introduce
20 that with someone who can't lay that foundation, I just wanted
21 the Court to be aware that we anticipate objections along those
22 lines.

23 THE COURT: One moment.

24 (Pause)

25 THE COURT: So I noticed these as well, the Exhibits

K1LVTEM3

1 110 through 112. Right?

2 MR. GELFAND: Yes, your Honor.

3 THE COURT: You're not making a 403 argument, which
4 would probably be hard here since it's a picture of a person
5 who looks like your client dressed in unremarkable clothing in
6 an unremarkable setting of a bank. You're laying a foundation
7 for admission as a business record.

8 MR. GELFAND: It's a 901 basic objection, your Honor.
9 It's an authentication objection.

10 THE COURT: Right.

11 MR. GELFAND: The parties have engaged in brief
12 dialogue about this. But I think there's just a fundamental
13 lack of a meeting of the minds as to what's required to
14 introduce this into evidence. And I just wanted to --

15 THE COURT: What, in your view, would be the means of
16 authenticating it?

17 MR. GELFAND: Testimony from a witness who was either
18 present and can say it fairly and accurately depicts what's in
19 the photo, or testimony from someone who's sufficiently
20 familiar with the recording devices.

21 THE COURT: I assume that, in fact, there's nobody who
22 necessarily saw Mr. Teman or anyone else who -- it looks like
23 he's using a machine, right? No? Is he dealing with a human
24 being or using a machine here?

25 MR. GELFAND: There's different photographs. The

K1LVTEM3

1 beginning -- some originate from ATM machines, some originate
2 from a human interaction, like 111, for example.

3 THE COURT: Right.

4 Let me turn to the government.

5 Government, I take it there's not a live witness who
6 remembers dealing with a person who looks like this on or about
7 the days indicated?

8 MR. BHATIA: No, your Honor.

9 THE COURT: So what's the means by which the photos
10 would be authenticated?

11 MR. BHATIA: The government will seek to introduce
12 these through senior investigator Karen Finocchiaro, who's a
13 Bank of America investigator. She, herself -- I believe she,
14 herself, pulled these photographs from their records. And so I
15 think she'll be able to lay a foundation that these are kept in
16 the ordinary course of Bank of America's business and, sort of,
17 lay the normal business record foundation, which to us seems
18 sufficient to put in the record.

19 THE COURT: In other words, she will be able to
20 testify based on her familiarity with what she does, that the
21 records are created in the ordinary course of Bank of America's
22 business, and they are maintained in the ordinary course, and
23 that she retrieved them from some -- from a storage area, if
24 you will, the place in which they are routinely maintained?

25 MR. BHATIA: That's right.

K1LVTEM3

1 THE COURT: Let me ask you, Mr. Gelfand, is there some
2 reason conceptually -- we'll see whether or not the witness is
3 up to the challenge of being a business records custodian, but
4 the government has proffered that she is and then, given her
5 job title, it would not be surprising if she were.

6 Is there some reason why conceptually one means of
7 authenticating a record like this isn't as a business record;
8 in other words, there may be others, but why not?

9 MR. GELFAND: Two reasons, your Honor.

10 The first is that we had actually reached out directly
11 to Bank of America asking for the video footage itself. And
12 our understanding from Bank of America -- and I'm
13 paraphrasing -- is that we don't keep that, we don't have that.
14 It's destroyed.

15 THE COURT: These are stills though.

16 MR. GELFAND: These are stills, as I understand it,
17 that were directly taken from video footage.

18 THE COURT: Right.

19 So the witness though presumably will testify that she
20 retrieved these, or at least counsel is representing, from some
21 regularly maintained database. Whether or not it continues to
22 be maintained, at least as of the time it was taken, these
23 apparently still existed.

24 Taking as true what somebody told you, which is that
25 the database that once kept these records doesn't any longer,

K1LVTEM3

1 what's the relevance there? There are plenty of databases that
2 override, but there are still business record hubs during the
3 period of time before they are overwritten.

4 MR. GELFAND: I think it would turn, your Honor, on
5 what she specifically says about the extent to which these were
6 kept and maintained in the ordinary course of business.

7 THE COURT: Right.

8 MR. GELFAND: It probably states the obvious; it
9 depends on whether she can lay an accurate foundation.

10 THE COURT: Right. I think that's about as far as we
11 can go here.

12 I take it you are not saying to me that, as a concept,
13 something about a security footage like this is out of bounds
14 as a business record. It's just blocking and tackling; it's
15 can she lay the foundation. And if you voir dire her about
16 whether the records still exist and why they don't, that may or
17 may not give you some traction in opposing admission.

18 MR. GELFAND: Correct, your Honor.

19 I just wanted to give the Court a heads-up that this
20 was an issue that might not otherwise be foreseeable.

21 THE COURT: Okay. And you've also now given the
22 government a heads-up. And that's useful, because rather than
23 detaining us, if Ms. Finocchiaro -- if I've mangled the name,
24 don't tell her. But she now -- the government will now see
25 what it can do to make sure that she, in fact, is qualified to

K1LVTEM3

1 say what the government hopes she -- what she needs to say to
2 get this in and, if not, it won't come in, we'll see. But I'm
3 glad to have the notice; it will save us time in front of the
4 jury.

5 MR. GELFAND: In that regard, your Honor, there's one
6 other --

7 THE COURT: But let me just ask you, do you have any
8 reason to think, Mr. Gelfand, that the analysis will differ as
9 between 110, 111, and 112, or are we likely all in or all out
10 based on authentication?

11 MR. GELFAND: Without knowing what she's going to say,
12 assuming they all come from the same databases and things like
13 that, no I think it would all be --

14 THE COURT: May I ask you, is there a reason why the
15 parties have been unable to stipulate to this? She's
16 testifying anyway, so it may not be a big deal; but it's within
17 the ambit of things that people often stipulate to.

18 MR. GELFAND: Your Honor, we have gone back and forth
19 in terms of proposed written stipulations. We spoke with
20 government counsel just before the Court took the bench, both
21 this morning and this afternoon. We're going to speak again on
22 stipulations. My anticipation is that we can reach
23 stipulations to the majority of bank records.

24 THE COURT: Okay.

25 MR. GELFAND: We don't want to waste anyone's time.

K1LVTEM3

1 The government doesn't want to waste anyone's name. We
2 appreciate that.

3 THE COURT: And, look, I don't know where this would
4 fit in, but -- and we'll see how much she can say. It isn't
5 obvious to me that there is -- unless it's really disputed that
6 your client is the one who negotiated the checks, maybe it is,
7 it's not obvious to me that this is a big deal.

8 And so, again, your judgment, you're not obliged to
9 stipulate to anything, eight-plus years of doing this and
10 trials in a prior life tell me that juries are not happy about
11 lawyers in either direction fighting about nonevents.

12 So the question is really whether -- while you're at
13 liberty to insist on your rights that they lay every
14 foundation, the question is just whether it's worthwhile,
15 particularly if it turns out to be an unsuccessful effort and
16 the jury is like, Why did we go through that?

17 MR. GELFAND: Yes, your Honor.

18 THE COURT: Your choice, but I'm just saying.

19 MR. GELFAND: I appreciate that.

20 Most juries hate record custodians, not personally,
21 but --

22 THE COURT: We won't tell Ms. Finocchiaro that either.

23 MR. GELFAND: The other exhibit doesn't relate to
24 authenticity. There's exhibits -- I'm trying to find the
25 government's number, the "interview transcription" with --

K1LVTEM3

1 THE COURT: You're looking for a government exhibit
2 number?

3 MR. GELFAND: Yeah.

4 Your Honor, it's Government Exhibit 126 and 128.

5 THE COURT: Yes, I wondered about these.

6 What are these?

7 MR. GELFAND: Good question.

8 THE COURT: Sorry, what's your application?

9 MR. GELFAND: Our issue, your Honor, is that we are
10 not disputing that these came from the bank; in other words,
11 we're not being crazy. But what appears here is that there are
12 multiple levels of hearsay that would not make it just readily
13 and easily admissible under just a general business --

14 THE COURT: What does this reflect, just a call by
15 somebody affiliated with one of the customer accounts
16 claiming -- disputing a check and a charge?

17 MR. GELFAND: It's unclear who the declarants are. It
18 appears that Ilana Habibian -- we asked the government about
19 this yesterday by phone -- is a bank employee.

20 THE COURT: Right.

21 MR. GELFAND: Then there's reference to Benjamin
22 Soleimani, there's reference to Joseph Soleimani. And it
23 appears to be kind of notes or a transcription of some sort of
24 question and answer.

25 THE COURT: Right.

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1 And is the concern authentication or is the concern
2 that there are statements here that you would not want received
3 for the truth of the matter asserted because they are in the
4 nature of the customer denying permission?

5 Looks like the latter.

6 MR. GELFAND: The latter, your Honor.

7 And to the extent -- this was done with a bank, as
8 opposed to with the government; so I don't think there's any
9 testimonial applications of the confrontation clause.

10 However, it appears that this is basically a way to
11 "back-door" on statements by someone that were actually written
12 down by someone else.

13 THE COURT: Well, there are a couple of questions
14 here. But one is authenticating these records; perhaps they
15 are easily authenticated as a business record or otherwise.

16 But then the issue is there is hearsay here to the
17 extent that the statements are taken for the truth of the
18 matter asserted. The broad point is the customer seems to be
19 alerting the bank to a dispute about a charge.

20 Let me ask the government, by what means will these
21 come in, and for what purpose would they be coming in?

22 MR. BHATIA: Your Honor, we believe that these would
23 come in through a JPMorgan Chase records custodian. They could
24 also come in through -- I think they'd come in as a records
25 custodian.

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1 THE COURT: All right. So who's that? Is that --

2 MR. BHATIA: I think I have the name somewhere in my
3 records, but I don't recall the name right now.

4 THE COURT: But that person would be called as a
5 witness?

6 MR. BHATIA: They would be called as a witness.

7 THE COURT: What are these records? What's the
8 species of records? How do we refer to these?

9 MR. BHATIA: So these records are stored, as I
10 understand it, in the JPMorgan Chase loss system. It's an
11 internal system that they have to record records like these
12 regarding, I think, fraud investigations. But I believe it's
13 like a regularly kept --

14 THE COURT: But it's a regularly kept log of customer
15 calls?

16 MR. BHATIA: In this case it's a customer call, that's
17 right.

18 THE COURT: All right.

19 So let's assume for argument's sake that your witness
20 is able to say, Here at JPMorgan we prepare a typed synopsis of
21 customer calls, and then we regularly maintain them in a
22 database. That gets you through one level of hearsay, that
23 these words were said to JPMorgan Chase. That doesn't get you
24 to the second level of hearsay, which is that what the customer
25 said to JPMorgan Chase can be taken for the truth of the matter

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1 asserted.

2 The customer could have also said that, you know,
3 Mr. Imperatore was the shooter on the grassy knoll; it doesn't
4 come in for the truth of the matter asserted.

5 The point is there's a second layer of hearsay here.
6 What do you propose to do about that?

7 (Counsel conferred)

8 MR. BHATIA: So, your Honor, I think on one hand these
9 are statements -- we believe that these are statements of
10 Joseph Soleimani, one of the witnesses that we expect to call
11 at trial.

12 THE COURT: Still is hearsay if it's for the truth of
13 the matter asserted, unless there's a hearsay exception.

14 MR. BHATIA: So we think that's a prior consistent
15 statement.

16 THE COURT: To rebut a charge of recent fabrication.

17 MR. BHATIA: We believe that that's going to be one of
18 the -- that could be a line of attack regarding this witness.

19 THE COURT: Well, let's see. What's the date -- the
20 Soleimani call appears to be May 2nd, 2019.

21 MR. BHATIA: That's right.

22 THE COURT: And when does he go to the authorities?

23 MR. BHATIA: This is the time when he reported to the
24 bank, at least, that he wanted this to be charged back.

25 THE COURT: Okay. And your theory is that this is a

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1 prior consistent statement to rebut a charge by the defense
2 that Mr. Soleimani, some time after this date -- only after
3 this date developed the theory that he -- that the charges were
4 unauthorized?

5 MR. BHATIA: We believe that it might be argued that
6 Mr. Soleimani is only now saying that he never authorized these
7 checks. And it's not a genuine belief that he wants these --
8 that he wasn't -- that these checks weren't authorized. So we
9 believe that it might be challenged that this is a recent
10 fabrication.

11 THE COURT: But if the defense's view is that all
12 along he's been fabricating it, and that he never authorized
13 it, and that whenever he started to say it, it was a
14 fabrication -- in other words, the idea of the charge -- the
15 exception with respect to prior consistent statements is that
16 there was some motive that developed in between to lie.

17 In this case, though, I'm not sure why that works.
18 The victims are the ones who catalyze the whole case, and they
19 apparently do so with a call like this. So why is it that this
20 is really to rebut a charge of recent fabrication? Is there
21 something that happens in between?

22 MR. BHATIA: So, of course, we aren't exactly sure
23 what the defense's cross-examination and arguments might be.
24 But we also believe that under this rule, under -- I want to
25 pull up the right rule, it's 801(d)(1)(B), it's also

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1 appropriate to rehabilitate a declarant's credibility as a
2 witness when attacked on other grounds.

3 THE COURT: Right. Go ahead.

4 MR. BHATIA: And so we believe that, in particular, if
5 the argument here is that this isn't a genuinely held belief,
6 then it's also relevant that Mr. Soleimani made the same claim
7 on a different date.

8 THE COURT: Why is it important that these statements,
9 as opposed to Mr. Soleimani's testimony, come in for the truth
10 of the matter asserted? They clearly come in for other
11 purposes. They explain the bank's later conduct; they
12 essentially unspool the events in this case. The issue is
13 solely for the truth of the matter asserted. I'm assuming here
14 that a business records foundation comes in for the fact of the
15 complaint by Soleimani. Presumably he's going to testify to
16 the same effect at trial, right?

17 MR. BHATIA: That's right.

18 THE COURT: So why does it matter if his earlier
19 statements to the bank come in for the truth of the matter
20 asserted as opposed to simply to reflect the fact that he first
21 made the claim at a particular date and then that's what caused
22 the bank to act? What difference does it make?

23 MR. BHATIA: I think it might affect the weight given
24 to the evidence by the jury. I think we're entitled to say
25 that he made a true statement before, and he's making a true

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1 statement today that you can credit fully. And I think we're
2 entitled to under 801.

3 THE COURT: One possibility you're offering is
4 801(d)(1)(B)(i). But that requires a recent fabrication or a
5 recent improper influence or motive in so testifying. Again,
6 we'll see whether or not the testimony supplies that.

7 But the defense may simply be all along he was making
8 this up for the oldest motive known to man, he wanted more
9 money. And it's not that there is something recent; it's just
10 that all along he's telling a falsehood that Teman didn't have
11 a right to create or negotiate these checks. It's not that
12 something recent happened, he just -- he doesn't like the deal
13 he struck with Teman and he wants his money back.

14 That's one possibility.

15 I don't know whether you're going to get a recent
16 fabrication claim here as opposed to a wholesale, all along
17 fabrication claim here.

18 The other argument is to rehabilitate the declarant's
19 credibility as a witness when attacked on another ground.

20 What might that ground be that properly triggers this?

21 MR. BHATIA: I think that other ground might be that
22 this is not a generally held belief, which is like what you've
23 referenced earlier, that he doesn't genuinely believe these
24 were unauthorized, but he's welshing on a deal.

25 So I think there his credibility is being attacked as

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1 sort of not giving truthful --

2 THE COURT: On the grounds that he's been saying this
3 all along, in effect.

4 MR. BHATIA: It is rehabilitative to say he's been
5 saying this all along.

6 THE COURT: Or, I guess, the argument would be the
7 fact that he made the statement soon after getting the account
8 statement revealing the deduction or the charge is an indicator
9 that he meant what he said; he reacted quickly.

10 MR. BHATIA: That's right.

11 THE COURT: Defense counsel, for what it's worth, I
12 would think that it does tend to support the witness's
13 credibility to the extent that soon after receiving the account
14 statement with the disputed charge, he reacted to it in the way
15 that one would argue a person who felt that the charge was
16 bogus did.

17 So I'm happy to hear argument at the time, but
18 assuming authentication, I think that latter point supplies a
19 good reason to allow this to come in for the truth. It's not
20 that it's recent fabrication; it's that it is credibility
21 enhancing that he made the statement soon after getting the
22 account statement.

23 MR. GELFAND: Can I just clarify something and perhaps
24 a government proffer would help with this.

25 At first and second reading of this document, it was

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1 unclear to me whether the declarant was Benjamin Soleimani,
2 because there's a thing that says "authentication known
3 customer."

4 THE COURT: Right.

5 MR. GELFAND: And it actually occurs twice. And then
6 it just says, Signer to contact Joseph Soleimani. And then
7 it's unclear who's actually calling, at least from the face of
8 the record.

9 THE COURT: Right.

10 Who is Benjamin Soleimani, government counsel?

11 MR. BHATIA: Benjamin Soleimani and Joseph Soleimani
12 are the two principals of ABJ; they are brothers.

13 THE COURT: Right.

14 MR. BHATIA: We believe though that the declarant in
15 these records -- and this is what I expect the evidence will
16 show -- was Joseph Soleimani.

17 THE COURT: It looks so. Right.

18 MR. GELFAND: Okay.

19 THE COURT: Anything follow from that or just --

20 MR. GELFAND: Obviously if it wasn't Joseph Soleimani,
21 and Benjamin Soleimani is not testifying.

22 THE COURT: Right. Understood.

23 Look, they are both principals of ABJ. The thesis
24 here you are presumably suggesting is that ABJ made this up
25 after the fact. And to the extent that ABJ gets the account

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1 statement and one of its principals calls fraud on it right
2 away is not irrelevant in formulating a judgment about whether
3 ABJ, through whichever principal, genuinely believed it never
4 agreed to this.

5 We'll see if it's authenticated. But my instinct at
6 this point is that it likely does come in for the truth of the
7 matter asserted. We'll see.

8 Appreciate your raising the issue early.

9 MR. GELFAND: Understood.

10 There's one other brief issue.

11 Some of the government's more recent *Jencks* material
12 that's been disclosed in more recent discovery within the last
13 week or so includes statements by witnesses -- in particular,
14 bank-type witnesses, bank investigators, things like that --
15 that these were deemed to be "fraudulent" or fraud. And I
16 would ask that those witnesses not opine in front of the jury
17 that something is or isn't fraud, because ultimately that's
18 what this trial is about.

19 THE COURT: Why isn't the right answer for me to
20 just -- well, what would be the purpose of their saying that
21 government counsel -- in other words, how is that integral to
22 the narrative here?

23 MR. BHATIA: I think it's important to show the steps
24 that different parties took in triggering the chargebacks in
25 question here. We expect that -- as I think I've mentioned, we

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1 expect that one of the defenses might be the victims were just
2 looking out for themselves and were trying to get their money
3 back. In fact, I think it will be shown that they went through
4 a process, and some of those process involves flagging
5 fraudulent activity.

6 THE COURT: Wait a minute.

7 The fact that some munchkin at JPMorgan Chase
8 concludes that something is fraud doesn't make it so. They
9 haven't done a full investigation.

10 Did anyone at JPMorgan Chase, for example, ever look
11 at any of the contracts between a Teman company and a customer?
12 Probably not.

13 MR. BHATIA: They didn't, your Honor.

14 THE COURT: Right.

15 So the real issue is if they use the label "fraud" in
16 the course of their work, the most important thing is that I
17 instruct the jury that whatever label JPMorgan Chase uses must
18 be disregarded by you as simply -- as anything other than
19 simply describing the internal label they put on it. In the
20 end, it is for the jury to determine whether or not the
21 elements of the types of fraud here are established. That's
22 the relevant point.

23 MR. BHATIA: That's right.

24 THE COURT: Defense counsel, the word "fraud" is all
25 over the case. It's going to be in my voir dire. So I'm not

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1 sure it's quite like saying heroin or something.

2 So it seems to me that the fact that the bank made
3 that conclusion, which is presumably derivative of what the
4 customer told them, if anything, it gives you an opportunity --
5 it allows you to say, Did the customer tell you that there was
6 a contract, or whatever your cross would be. But I think the
7 right answer is for you to ask me to give a limiting
8 instruction to the jury that whatever label the bank put on
9 this is of no moment.

10 MR. GELFAND: We appreciate that.

11 We'll propose a limiting instruction.

12 THE COURT: That's fine.

13 I'm certainly prepared to do one with or without
14 particular wording, but I think that's the right call.

15 It's hard, where the bank has a nomenclature for a
16 process like this to -- for me to police their grammar. And
17 sometimes doing that suggests, when the word slips out, that
18 there's actually some importance to it. So it seems to me the
19 defense's interest is better protected by my giving a firm
20 instruction rather than making it look like it's all that
21 radioactive.

22 MR. GELFAND: I think that's fair.

23 Our concern, as I think the Court understands, is that
24 the jury goes back and says, Well, these seasoned bank
25 investigators say this is fraud; it must be bank fraud.

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1 THE COURT: Look, that plays into your defense of a
2 rush to judgment, right?

3 MR. GELFAND: Sure.

4 THE COURT: You're then going to treat the bank as
5 synonymous with the government as having rushed to judgment and
6 not looked at the contract before making a decision. So
7 another way to look at this is an opportunity for you.

8 MR. GELFAND: Understood.

9 THE COURT: All right.

10 Anything further? Go ahead. Yes.

11 MR. DiRUZZO: I have one thing, Judge.

12 In thinking about the privilege issues, would the
13 Court be amenable for the parties submitting protective and a
14 clawback order? Because obviously the privilege issues that
15 we're talking about are going to be waived. But in the
16 production that the government is going to get, there very well
17 could be a straight email. And I don't want unrelated civil
18 litigation --

19 THE COURT: I see.

20 Let me just say this: You want to make sure that in
21 litigating advice of counsel here, you're not waiving any more
22 than is necessary.

23 MR. DiRUZZO: Correct.

24 THE COURT: The parties can negotiate what they want
25 to negotiate. I'm certainly not understanding your waiver with

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1 respect to this case as intending to waive as to any other
2 controversy. But as it relates to potential civil litigation,
3 hypothetically, with the banks or whatnot, it's hard for me to
4 see how there isn't a waiver here that runs to this
5 controversy. So I'm not --

6 MR. DiRUZZO: To be a little more precise, Judge, I'm
7 worried about that Mr. Reinitz is going to divulge an email on
8 unrelated civil litigation that has nothing to do with bank
9 fraud, RCCs --

10 THE COURT: I see. You want to make sure that if
11 there's an overproduction here, you have a right to claw back
12 the document or at least make sure that a production of
13 privileged material on an exogenous subject isn't treated as a
14 waiver.

15 MR. DiRUZZO: Exactly.

16 THE COURT: All right. I'm happy to just announce now
17 that you have the right -- if you act promptly -- to claw back
18 unrelated materials if they are produced in the course of your
19 forthcoming production of attorney-client materials. But, as
20 with all issues with respect to errant productions, fortune
21 favors the well-prepared and the swift, meaning an attempt to
22 claw back a document is more likely to be respected if it's
23 done sooner rather than later.

24 MR. DiRUZZO: Okay. Understood. Thank you, Judge.

25 THE COURT: Does that give you the comfort you need?

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1 MR. DiRUZZO: Yes, it does.

2 THE COURT: Okay. Very good.

3 Anything further from anyone?

4 MR. DiRUZZO: No, Judge.

5 MR. BHATIA: No, your Honor.

6 THE COURT: All right.

7 I'll see you at 8:30.

8 And again, I expect an email, copying the other side,
9 to my chambers if there's anything of any consequence that you
10 intend to raise tomorrow morning.

11 Thank you. See you at 8:30.

12 (Adjourned to January 22, 2020 at 8:30 a.m.)

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K1M7TEM1 CORRECTED

1 UNITED STATES DISTRICT COURT
 2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

19 CR 696 (PAE)

5 ARI TEMAN,

6 Defendant.

JURY TRIAL

7 -----x

8 New York, N.Y.
 9 January 22, 2020
 8:30 a.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13 APPEARANCES

14
 15 GEOFFREY S. BERMAN,
 16 United States Attorney for the
 17 Southern District of New York
 18 KEDAR S. BHATIA
 EDWARD A. IMPERATORE
 Assistant United States Attorneys

19 JOSEPH A. DIRUZZO, III
 20 JUSTIN GELFAND
 Attorneys for Defendant

21 ALSO PRESENT: DANIEL ALESSANDRINO, NYPD
 22 WILLIAM MAGLIOCCO, Paralegal, USAO

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1 (In open court)

2 THE COURT: All right. Good morning, counsel. Be
3 seated.

4 Thank you, everyone, for the hard overnight work. Oh,
5 Mr. Teman is not here.

6 MR. GELFAND: He just went to the restroom.

7 THE COURT: All right. Do you waive his appearance?
8 We've got business to take care of. He really needs to be in
9 his seat.

10 MR. GELFAND: Absolutely.

11 THE COURT: There are a handful of issues that came in
12 overnight. Before turning to the two specific issues raised by
13 the government's letters, let me just take care of one item
14 which should be self explanatory and obvious, but I want to
15 make absolutely sure there is no misapprehension among counsel.

16 Defense counsel, there are a handful of subjects that
17 obviously should not be properly included in a defense opening
18 here, but insofar as you're out of district and we have had a
19 hiccup or two, I want to make absolutely sure that the Court's
20 pretrial rulings are not to be commented on in an opening; the
21 defendant spending time in jail after his arrest is not
22 properly part of an opening; the speedy trial violation that
23 the court found is not properly part of an opening; good
24 character evidence, you know, per the commentary before doesn't
25 belong in the opening. I don't know if you're planning to say

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1 something about whether Mr. Teman does or doesn't have a
2 criminal record, but I don't know whether that's going to be
3 coming into evidence somehow or on what theory, but unless
4 you've got a coherent theory under which that's going to be
5 received in evidence, it shouldn't be commented upon. All
6 agree?

7 MR. DIRUZZO: Yes, your Honor. I will be giving
8 opening, and I understand what you said, and it's not a
9 problem.

10 THE COURT: Great. I just want to make sure you're
11 sticking to the facts and the issues here and not courting
12 objections. I don't like objections during an opening, but if
13 there is something that's well over the line, I will sustain
14 it, and that doesn't ever make anybody happy.

15 So I have received two letters from the government.
16 One I think is quite straightforward, which just involves a
17 specific exhibit from Bank of America's records, exhibit 34.

18 Defense, were you actually offering this document?
19 The government's letter at docket 84 raises the issue of
20 whether Defense Exhibit 34 -- which appears to involve some
21 other customer -- is being offered. Obviously you haven't had
22 a chance to respond. I can't imagine what the theory of
23 relevance would be.

24 MR. DIRUZZO: Your Honor, our theory is that it goes
25 to Mr. Teman's intent, because this is another RCC with the

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1 same language, drop our contract, no signature required, in the
2 bottom right-hand side. It was drawn on Signature Bank, one of
3 the banks that I believe --

4 THE COURT: Why does it go to his state of mind that
5 he engaged in the same conduct? It doesn't mean that it's
6 legal or illegal. It could be ripping off the other customer
7 or not, but it just means he did the same thing. I mean it's
8 not like somebody advised him at the bank, yeah, this is a
9 great thing to do, and you must have gotten the customer's
10 permission.

11 MR. DIRUZZO: No, but it goes towards his concept that
12 RCCs are permissible under the law.

13 THE COURT: One moment.

14 Mr. Teman, you need to be in your seat at 8:30. Your
15 counsel waived your appearance so I could proceed, but you need
16 to be here.

17 Go ahead.

18 MR. DIRUZZO: It goes towards his belief that RCCs
19 were permissible under the law, there is nothing nefarious or
20 improper with an RCC.

21 THE COURT: Wait. Because he has a check that he
22 deposits as an RCC to some other customer doesn't go to his
23 belief. It doesn't make it more likely that he believes that
24 these are legal or illegal. It could be that he ripped off
25 another customer, or it could be that another customer gave him

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1 authorization that these customers did not. We're not going to
2 try the case of Gold Management.

3 First of all, it should have been obvious under the
4 principles that I set out earlier in response to the
5 government's motion in limine that quote unquote good character
6 evidence, specific instances, are not admissible. But beyond
7 that, this invites a trial within a trial because who knows
8 what the course of dealings were with this other customer who
9 is not the subject of an indictment. The dealings with Gold
10 may or may not situate Gold in a different position from the
11 landlords who are entities 1, 2, 3 and 4, and so whatever he
12 did or didn't do with respect to Gold, A, it appears to be in
13 the nature of quote unquote good character evidence; but, B,
14 beyond that would only be potentially germane if the fact
15 pattern was on all fours with the other customers. And we're
16 not going to have a trial within a trial about his business
17 relationship involving a customer who is not a subject of the
18 charges here.

19 MR. DIRUZZO: I understand, your Honor, and I
20 understand your ruling, and I would just submit that you take
21 Defense Exhibit 34 as our offer of proof.

22 THE COURT: Very good. So, Exhibit 34 is out; I will
23 grant the government's motion at docket 84.

24 All right. The second issue involves the scope of the
25 waiver. As expressed yesterday, the defendant in order to

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1 facilitate his advice of counsel defense, made a subject matter
2 waiver scope with respect to lawyer Reinitz with respect to
3 advice and communications with Reinitz with respect to the
4 issues in this case, i.e., involving the use of RCCs and the
5 like. The government raises the issue of whether the defense
6 intends to assert a temporal limit to that waiver, with the
7 limit being the date of the defendant's arrest. The government
8 notes that at least for some period of time Mr. Reinitz appears
9 to have represented the defendant in connection with the
10 initial proceedings in this case.

11 So, let me ask the defense a few factual questions.
12 When, if at all, did Mr. Teman terminate the representation of
13 himself or his companies by Mr. Reinitz? Or does that
14 representation continue to this day?

15 MR. GELFAND: It continues to this day, your Honor.

16 THE COURT: So Mr. Reinitz continues to represent the
17 defendant and his companies?

18 MR. GELFAND: Yes, your Honor.

19 THE COURT: In a business way.

20 MR. GELFAND: Yes, your Honor.

21 THE COURT: And when, if at all, did Mr. Reinitz
22 represent the defendant in connection with the criminal case?

23 MR. GELFAND: Your Honor, when Mr. Teman was arrested
24 out of state, my understanding is Mr. Teman advised the
25 authorities arresting him, you know, Mr. Reinitz is my lawyer.

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1 He didn't have a reason to believe he needed a criminal defense
2 lawyer at the time. He didn't have a criminal defense lawyer
3 at the time.

4 THE COURT: Well, he obviously needed a criminal
5 defense attorney if he was arrested. You're simply saying he
6 didn't have one yet.

7 MR. GELFAND: The arrest was a surprise to Mr. Teman.

8 THE COURT: Right. But once he's arrested he needs a
9 criminal defense lawyer.

10 MR. GELFAND: No, of course, your Honor. But I'm
11 saying it's not like he had someone lined up prior to.

12 THE COURT: So what happens?

13 MR. GELFAND: So, as I understand it -- I wasn't
14 involved in the case at the time -- Mr. Reinitz makes initial
15 contact with Detective Alessandrino, who ultimately gives him
16 the prior assistant U.S. attorney's name and contact info,
17 Mr. Gutwillig, and there is some very early conversations of
18 essentially where is he, what's the charge, what is the
19 charging document, and then Mr. Reinitz works to facilitate
20 getting Mr. Teman criminal counsel initially in Florida for the
21 initial matters, and ultimately here, ultimately culminating in
22 Mr. Teman retaining Mr. DiRuzzo and I initially.

23 THE COURT: You two are the next lawyers in after
24 Mr. Reinitz?

25 MR. GELFAND: We're the next lawyers to formally

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1 represent Mr. Teman. Mr. Reinitz facilitated or participated
2 in some discussions with other potential lawyers.

3 THE COURT: Understood, right. And then the issue and
4 to what degree did Mr. Reinitz participate formally or
5 informally in the representation of Mr. Teman in connection
6 with this matter by which I mean the arrest forward?

7 MR. GELFAND: Your Honor, can I have one minute,
8 please?

9 THE COURT: Sure. I would -- sure.

10 MR. BHATIA: Your Honor?

11 MR. GELFAND: Your Honor, my understanding is that
12 Mr. Reinitz did not represent Mr. Teman in the criminal matter,
13 but as essentially civil counsel or corporate counsel
14 Mr. Reinitz was involved -- including with us -- on certain
15 discussions relevant to diligence, about possible defenses,
16 understanding the underlying facts, things like that.

17 THE COURT: Well, that complicates things then because
18 for obvious reasons. I mean he is a fact -- you obviously
19 would like to use him as a fact witness. You can't have this
20 as a sword and a shield. His communications with Mr. Teman
21 relating to this subject matter are fair game. You can't be
22 drawing lines within that.

23 MR. GELFAND: We agree, your Honor. The issue is
24 the -- I think there is a very --

25 THE COURT: I mean he continues to represent the Teman

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1 companies to this day and Mr. Teman in a business level.

2 MR. GELFAND: Yes, your Honor.

3 THE COURT: So, is there anything -- I appreciate that
4 communications about the terms of bail are separate; that's a
5 different subject matter. Communications that don't relate to
6 the business practices at issue are a different story, but the
7 waiver here relates to the business practices at issue. You
8 aren't trying to limit any inquiry about that by time, are you?

9 MR. GELFAND: No, your Honor. What we are limiting,
10 to be very precise, is communications that are not about
11 essentially reliance on the contracts, the RCCs, the subject
12 matter related to these entities, but that are about you may
13 want to hire this lawyer, you may want to hire this lawyer.

14 THE COURT: There may not be a controversy here. If
15 what you're saying is Mr. Reinitz provided advice -- whether we
16 call it legal or business -- he has provided advice about the
17 retention of counsel or things like that, that's outside of the
18 scope of a waiver because it's a different subject matter. But
19 to the extent that Mr. Reinitz spoke with Mr. Teman at any
20 point before or after last July 3 relating to RCCs, checks, his
21 dealings with entities 1 through 4, those subjects are fair
22 game for inquiry given the waiver.

23 MR. GELFAND: We don't disagree, your Honor.

24 THE COURT: OK. So I think that moots the
25 government's motion. In other words, you are not in fact

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1 drawing a temporal limit within the subject matter, to wit, Mr.
2 Teman's business dealings with entities 1 through 4, his RCCs,
3 the check, creation and negotiating practices at issue both
4 historically and going forward. That's within the scope of the
5 waiver. What you want to make sure is that the government
6 doesn't get into issues involving, for example, the selection
7 of legal representatives or the negotiation of bail terms or
8 the like, or consideration of a guilty plea or not.

9 MR. GELFAND: Correct, your Honor.

10 THE COURT: Have I articulated the line correctly?

11 MR. GELFAND: Yes, your Honor. And, to be clear,
12 we -- what teed up this issue was actually not the defense's
13 approach to the Court's order yesterday, but was a separate
14 subpoena that the government issued to Mr. Reinitz last night.
15 And there was a second draft of it, as I understand it.
16 Mr. Reinitz sent us a copy of the subpoena, the trial subpoena.
17 The subpoena added -- initially it was for all intents and
18 purposes, essentially the scope of the Court's order with a
19 couple extra things of dates -- records of dates when he spoke
20 with Mr. Teman, things that I'm sure Mr. Reinitz will respond
21 to. The additional aspect was any communications that
22 Mr. Reinitz had with Mr. Teman about the complaint or the
23 indictment, and that involves communications that we believe
24 are outside the limited waiver.

25 THE COURT: Well, the answer is it may include some,

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1 but it may include ones that are within the scope of the
2 waiver. If Mr. Reinitz and Mr. Teman spoke about the business
3 practices that are implicated by the complaint, that's clearly
4 within the scope of the waiver, correct?

5 MR. GELFAND: Yes, your Honor.

6 THE COURT: Whereas if they spoke about the
7 implications of being a federal felon, or being arrested, or
8 having an ankle bracelet, or a particular cosigner, or the
9 terms of engagement of a criminal defense specialist, that's
10 outside the scope of the waiver.

11 MR. GELFAND: That's our theory.

12 THE COURT: But you would agree that conversations he
13 had with Mr. Teman about the conduct at issue, including Mr.
14 Teman's dealings with the four entities, the charged conduct,
15 regardless of the date and time of those communications, are
16 within the scope of the subject matter waiver.

17 MR. GELFAND: Yes, your Honor.

18 THE COURT: OK. Government, have we cleared up the
19 issue? Is there some scenario that you think has been left
20 blurry?

21 MR. BHATIA: I think your Honor has covered most of
22 it. I just want to be clear just so there isn't some confusion
23 down the road. It is our view that a conversation like
24 regarding the indictment -- in Count One we charged certain
25 checks, you told me in Count One -- I think -- let me rephrase

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1 that. Conversations regarding the complaint or the indictment
2 and the substance of it I think would still be covered by the
3 waiver.

4 THE COURT: Well, the substance of it certainly, but
5 the legal implications from a criminal defense perspective of,
6 let's say, pleading guilty, or going to trial, or who to hire,
7 that's a different story. And so I think the line here
8 involves if they are looking back retrospectively about the
9 conduct at issue and discussing that, Mr. Gelfand is candidly
10 saying that's within the scope of the waiver -- and he is
11 nodding now. And, similarly, if they continue to discuss these
12 business practices going forward -- for whatever relevance that
13 theoretically might have or not -- that's within the scope of
14 the waiver; it's a subject matter waiver.

15 But Mr. Teman -- presumably not knowing any other
16 lawyer -- got his business lawyer involved in the early process
17 of staffing his case, and although presumably Mr. Reinitz knows
18 little about criminal law, he knew enough to work the phone and
19 try to spot talent. That hunt for a legal team doesn't seem to
20 me to be within the scope -- and I don't think you're saying
21 otherwise -- even though one can imagine conversations about
22 the complaint influencing that: Who is a good white collar
23 lawyer? Who has had experience with bank fraud? In that
24 respect it's glancingly touching the complaint, but it's
25 clearly not what any of us understand to be the scope of the

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1 waiver. Do you agree with that?

2 MR. BHATIA: I agree with part of what you said, that
3 I would call it maybe the administrative part of finding a good
4 lawyer, negotiating terms of engagement wouldn't be covered.
5 In fact I'm not sure that would be relevant to this case
6 anyway.

7 But conversations about should I take a guilty plea or
8 should I not take a guilty plea to the conduct that you
9 previously advised me about, I do think would be covered. What
10 I want to make clear is that it is the government's position
11 that --

12 THE COURT: Let's see if this is an academic issue or
13 not.

14 Defense counsel, without giving me the content -- if
15 we need to go into the robing room for an in camera discussion,
16 we will -- can you tell me declaratively now whether Mr. Teman
17 had any discussions with Mr. Reinitz at any point about whether
18 or not to take a plea in this case?

19 MR. GELFAND: Based on my client's recollection and
20 everything I know about the case, never.

21 THE COURT: Did Mr. Reinitz continue to be any part of
22 the defense group here after present counsel were retained?
23 Did he assist in any way in shaping the representation of Mr.
24 Teman in this case? If so, we have an issue.

25 MR. GELFAND: No, your Honor, but I want to caveat

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1 that with one small caveat, and that's at various times
2 Mr. Reinitz directly provided us information, documents, no
3 different from any other witness.

4 THE COURT: But that's in his capacity as a fact
5 witness as to advice of counsel. But did he play any role in
6 shaping the defense in this case? You would not be asserting
7 an attorney/client privilege based on a common interest
8 communication. The privilege you have is the waived one, here
9 involving your communications with a fact witness, and you have
10 now waived a privilege as to that. Do I have that right?

11 MR. GELFAND: You do, your Honor. He did not
12 participate in any way other than as a fact witness. And, to
13 be precise, some communications, Mr. Reinitz in the ordinary
14 course of his practice may have used phrases like "privileged"
15 and "confidential" in giving them to us, but I don't draw any
16 significance to that in our analysis.

17 THE COURT: You are not claiming he has ever been part
18 of the defense team of this case.

19 MR. GELFAND: No, your Honor.

20 THE COURT: And when was the first of you or
21 Mr. Gelfand retained in this case?

22 MR. GELFAND: I am Mr. Gelfand.

23 THE COURT: Forgive me. When was the first of you and
24 Mr. DiRuzzo retained in this case?

25 MR. GELFAND: Very soon after Mr. Teman was released

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1 on bond in Florida.

2 THE COURT: So late in the first half of July, July 8,
3 9 or 10.

4 MR. GELFAND: Yes, your Honor. As a technical matter
5 maybe just a week or two later.

6 THE COURT: But you are saying from the point in which
7 you were retained forward, the only communications you have
8 had -- speaking now about you and Mr. DiRuzzo -- with
9 Mr. Reinitz bear on in effect his role as a fact witness as
10 opposed to shaping the criminal defense effort here.

11 MR. GELFAND: Yes, again with one caveat, and that's
12 there is some related civil -- not related at all -- unrelated
13 civil issues, and Mr. Reinitz in representing Mr. Teman or his
14 companies in those completely unrelated matters at various
15 times inquired about whether or not certain things might have
16 an impact on the criminal case.

17 THE COURT: What are the unrelated matters?

18 MR. GELFAND: There is a civil litigation involving a
19 company called MVI. It's a dispute over a rival intercom
20 system.

21 THE COURT: So that's a competitor dispute, not a
22 dispute with a customer.

23 MR. GELFAND: Correct. It's a trade secret case, as I
24 understand it.

25 THE COURT: So, I understand Mr. Reinitz I gather

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1 represents Mr. Teman in connection with competitor disputes.

2 MR. GELFAND: Yes, your Honor.

3 THE COURT: And the reason that became a germane
4 subject with the criminal defense team here -- again be
5 careful, I don't want you to inadvertently comprise unrelated
6 legal interests of Mr. Teman. I just want to make sure that
7 I'm setting clear ground rules. Can you explain what led that
8 to be a germane subject for you?

9 MR. GELFAND: Yes, your Honor. Generally, not limited
10 to that matter, but matters completely unrelated to the
11 entities in this case, and to the RCCs or anything like that,
12 as with any ongoing litigation there was some general
13 discussion, matter of, you know -- I am going to phrase this
14 broadly -- but if we do something in the civil case, could that
15 have a negative impact on the other case.

16 THE COURT: Right.

17 MR. GELFAND: As a practical matter, just to be clear
18 with the Court, Mr. Reinitz -- when we got involved in the
19 case -- me being Mr. Justin Gelfand -- I went to college with
20 Mr. Teman. That's how I know Mr. Teman.

21 THE COURT: What college?

22 MR. GELFAND: Brandeis University. As a practical
23 matter we were certainly not in touch on a daily basis or
24 anything like that from college, but Mr. Teman with Mr. Reinitz
25 initially retained counsel that I don't know who represented

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1 him in the bond hearings and things like that.

2 THE COURT: In Florida.

3 MR. GELFAND: In Florida. And Eric Irons in another
4 attorney who played a minimal role in the very early stages of
5 the criminal case. There are some communications that I am
6 aware of between Mr. Reinitz and those two attorneys. Then Mr.
7 Teman reached out directly to me.

8 THE COURT: Right.

9 MR. GELFAND: And doing my diligence I had some
10 initial conversations with Mr. Reinitz, who I understood had
11 been in very broad strokes essentially quote unquote corporate
12 counsel quite some time, to obviously do my diligence, educate
13 myself about the case. And understanding all those things,
14 there are some early communications between Mr. Reinitz and his
15 other attorneys that preceded my involvement in the case that
16 we are aware of, and then there is communications from the time
17 I got involved.

18 I mean candidly, your Honor, the nature -- and I am
19 happy to speak in very general terms -- the nature of the
20 conversations about what I'm calling the unrelated litigation
21 fell into the category of, to be blunt, generally if a
22 defendant facing criminal charges, you know, can avoid being
23 put under oath, that's a good thing.

24 THE COURT: I see. In other words, the concern -- for
25 example, in those cases there is an interplay, because if Mr.

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1 Teman is deposed in those cases he may say something, he may be
2 questioned about the pending criminal case here. If he invokes
3 his Fifth Amendment privileges in that case, that may hurt him
4 in that case in order to protect him here, and so somebody was
5 mediating the relationship between his interests in the two
6 cases.

7 MR. GELFAND: Yes, your Honor. And there were
8 discussions that were not fact witness discussions but
9 lawyer-to-lawyer discussions in that vein.

10 THE COURT: I think we have gotten to a point where
11 there ought to be clarity here. Mr. Gelfand, as always, you
12 have been gracious and clear.

13 I want to make sure, government, that at this point
14 there is clarity, and it seems to me that what you are seeking
15 you have gotten that which is reasonable, which is to say that
16 the subject matter of the conduct here -- regardless of time
17 scope -- is covered by the waiver as to the Teman/Reinitz
18 communication, but there may be a limited subset of
19 Reinitz/Teman conversations that are out of bounds, what you
20 call the administrative or bail subjects, or advice about, for
21 example, the interplay between this action and other
22 litigations that Reinitz represents Teman on. I don't think
23 that's really in play here.

24 Do you need any more clarity from the court?

25 MR. BHATIA: Can I just have a moment to confer with

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1 defense counsel for a moment?

2 THE COURT: Yes, you may.

3 OK, counsel have conferred with each other and amongst
4 themselves. Mr. Bhatia, anything further?

5 MR. BHATIA: Yes, thank you, Judge Engelmayer.
6 Apologies for the delay.

7 THE COURT: No worries.

8 MR. BHATIA: I spoke to defense counsel. I was
9 prompted to have this conversation because as part of the
10 discovery of the conversations involving Mr. Reinitz we
11 received this morning one draft of a letter dated January 22
12 from Mr. Reinitz and then another draft --

13 THE COURT: January 22 this year.

14 MR. BHATIA: That's today. We received a letter dated
15 today from Mr. Reinitz sent to defense counsel, and then we
16 received a second version of that letter, a final draft maybe.
17 We wanted to make sure that there weren't conversations that
18 would say make version one look like version two. Defense
19 counsel has represented that there weren't those
20 communications. But we think conversations like that would be
21 fair game to get into.

22 THE COURT: It depends on the context. If they're
23 taking about baseball, that's one thing. If they are talking
24 about the implications of a different civil litigation on this,
25 that's also out of bounds. If they are talking about the

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1 content of the charges in this case or the business practices
2 at issue, things like that, that's within the scope. Think
3 we've covered that.

4 MR. BHATIA: I think it does have to do with the scope
5 here, so I think those would be germane, and they would be fair
6 for us to get into and then be subject to the waiver. So I
7 think at this point, without more specifics about what exact
8 areas we would get into, I think we are all on the same page.

9 THE COURT: My goal with all of these rulings is to
10 let counsel try their case without interruption in front of the
11 jury by me. I want you to have clarity as to the ground rules
12 so we fight it out beforehand with enough notice so that you
13 can organize your courtroom advocacy.

14 Have we achieved the necessary clarity as to the
15 advice of counsel issue?

16 MR. BHATIA: I think so.

17 THE COURT: All right.

18 Look, given the sensitivity of counsel issues --
19 although as a general matter I love to have issues addressed
20 other than at side bars when at all possible -- as the trial
21 moves on, if we see that you're in an area where you have any
22 sense that there could be anything ticklish, you may ask for a
23 sidebar about that, and I will be solicitous of that,
24 particularly where it involves Mr. Reinitz, because I want to
25 make sure in areas involving attorney/client and waiver that we

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1 don't inadvertently have something coming up in front of the
2 jury that was outside the scope of the waiver. But I think you
3 have the necessary clarity.

4 I understood the main spirit of your letter to be
5 resisting the idea of a temporal sunset on the waiver -- on the
6 subject matter waiver -- and you have gotten clarity both from
7 me and from Mr. Gelfand that there is no temporal sunset on the
8 subject matter waiver.

9 MR. BHATIA: Thank you.

10 THE COURT: All right. I think we have now taken care
11 of the matters that were the subject of letters.

12 Beginning with the government -- I would like to give
13 you a break before the jury comes -- does anyone have anything
14 else to raise begin with the government?

15 MR. BHATIA: No, your Honor.

16 THE COURT: Mr. DiRuzzo?

17 MR. DIRUZZO: Yes, your Honor. Just so it's clear and
18 for purposes of the record.

19 THE COURT: Sorry, just a little clearer. This is an
20 old and wonderful but a fun house of a courtroom, so please
21 always speak loudly and into the mics.

22 MR. DIRUZZO: Sure. So, your Honor, in complying with
23 this Court's order, we do have a binder of the privileged
24 information to give to you.

25 THE COURT: These are the materials that were given to

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1 the government, right? I'm not getting something that the
2 government doesn't already have.

3 MR. DIRUZZO: Correct, your Honor.

4 Your Honor, last night -- yesterday asked for
5 materials both in paper and electronically. I provided to your
6 chambers the documents electronically. I also provided those
7 same documents to the government electronically. The problem
8 that I have with this binder is this binder, the paper, is
9 incomplete. There are a couple tranches that got to both your
10 chambers and the government 2 o'clock in the morning, and as
11 you can imagine --

12 THE COURT: All is forgiven; I appreciate that.
13 That's fine. So, can you just top it up so that by tomorrow
14 morning I have whatever the balance is?

15 MR. DIRUZZO: Sure. I will give it to you all at one
16 time.

17 THE COURT: Well, why don't you give me what you have,
18 give it to my law clerk. I don't know that any of it is likely
19 to be germane today, but I try to keep ahead of things so that
20 to the extent I can flip through it, it just gives me more
21 insight into the case, and I will take the balance when you get
22 it.

23 MR. DIRUZZO: Counsel for the government did mention
24 those letters.

25 THE COURT: Those letters?

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1 MR. DIRUZZO: The letters from Mr. Reinitz that are
2 dated today.

3 THE COURT: Right.

4 MR. DIRUZZO: The first letter I received at
5 approximately 2:15 in the morning. I immediately included that
6 in the production electronically to chambers, because I was
7 having a problem with the USA FX, my log-in. I was using
8 cocounsel's long-in who was asleep at the time. I was unable
9 to upload them to the government. In the morning I uploaded
10 them, but I also had received from Mr. Reinitz an updated, a
11 final version, so to speak, of the letter, and that's why there
12 are two letters dated the same that look very similar but are
13 not. Just so it's clear, between 2 o'clock in the morning and
14 6:15 or so neither myself or Mr. Gelfand had any conversations
15 with Mr. Reinitz.

16 THE COURT: I am relieved to hear that, that's good.

17 MR. DIRUZZO: So if there was any confusion as to
18 these documents.

19 THE COURT: No, I didn't infer anything nefarious, but
20 I appreciate the clarity.

21 Anything else from the defense?

22 MR. GELFAND: No, your Honor.

23 THE COURT: Let me check with Mr. Smallman.

24 Go ahead, Mr. Bhatia.

25 MR. BHATIA: One more thing. I just want to note for

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1 the record that in reviewing some of the documents produced
2 yesterday by the defense I did identify some documents that I
3 think might remain privileged and might not be part of the
4 waiver in this case, so I just want to note for the record I
5 alerted defense counsel this morning.

6 THE COURT: That's professional and good for you to do
7 that. Defense counsel raised the possibility of a claw back.
8 Particularly given the warp speed this has arisen, it's not
9 surprising. And I appreciate your professionalism in spotting
10 the issue, alerting the defense and alerting the Court.

11 If no one else has anything, let me just check with
12 Mr. Smallman about the earliest possible time that our venire
13 could get here.

14 Mr. Smallman estimates that we won't have anybody
15 before 9:45. So, you are, as we say in Fourth Amendment law,
16 free to leave until 9:40. I will be apt to be here any time
17 from 9:40 or thereafter, depending on what I hear from Mr.
18 Smallman and the jury clerk. Thank you.

19 (Recess)

20 (Continued on next page)

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1 THE COURT: Mr. Smallman tells me that the venire is
2 here; he's just waiting for one or two of them to finish
3 comfort break and then we'll bring them in.

4 I'm joined on the bench by Judge Lewis Liman, who is
5 new to the S.D.N.Y. and will be sitting here for whatever
6 guidance he can get from watching a jury selection. I'll
7 introduce him to the jury as such, but he'll be here for jury
8 selection, but not the balance of the trial.

9 MR. BHATIA: Your Honor?

10 THE COURT: Yes.

11 MR. BHATIA: We can just discuss one matter before the
12 jury comes here.

13 We agreed to a bank records stipulation, and I just
14 wanted to let the Court know about that. And we'll read that
15 out -- I expect to read that out with the first witness.

16 THE COURT: Very good.

17 MR. BHATIA: Is a Bank of America representative.

18 THE COURT: Very good.

19 Just to remind you, just given the old courtroom, just
20 speak a little louder.

21 MR. BHATIA: Excuse me.

22 THE COURT: Thank you.

23 I think I mentioned this at an earlier pretrial
24 conference, but each day I value getting an updated exhibit
25 list with a mark annotating what's been received and through

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1 what witness. So make sure that's added to the list.

2 MR. BHATIA: We will.

3 THE COURT: Okay. Mr. Gelfand.

4 MR. GELFAND: Your Honor, I just wanted to note for
5 the record that on behalf of Mr. Teman, as his legal counsel,
6 we signed the stipulation. He's well aware of it. He fully
7 agrees with it.

8 THE COURT: Very good. Thank you.

9 (Jury selection commenced)

10 (Continued on next page)

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K1M7TEM3

1 (A jury was selected and sworn)

2 THE COURT: All right. Counsel is there anything to
3 raise while we have this break?

4 MR. DIRUZZO: Yes, your Honor. The defense would
5 invoke the rule of sequestration.

6 THE COURT: What does that mean?

7 MR. DIRUZZO: That means that when a potential witness
8 has yet to testify, that they can't sit in the room to hear
9 other witnesses, or opening statements, or something of that
10 nature.

11 THE COURT: I have not heard it referred to as that,
12 but you're invoking your rights under Rule 615.

13 MR. DIRUZZO: Yes.

14 THE COURT: Very good. Government, are there any -- I
15 take it, Detective Alessandrino as a party agent is permitted
16 under 615 to be at the table.

17 MR. BHATIA: That's right.

18 THE COURT: But the other witnesses you have will in
19 fact have been sent from the courtroom during other testimony.

20 MR. BHATIA: That's right.

21 THE COURT: And I assume you are making the same
22 application with respect to the defense.

23 MR. BHATIA: Yes.

24 THE COURT: Very good, I am happy to grant that. It's
25 not the nomenclature I ordinarily around here but the concept

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1 of course equally applies.

2 Anything else to raise with me? No, Judge.

3 THE COURT: Government?

4 MR. BHATIA: Your Honor, briefly, we have learned that
5 in the last few days the defendant has make public statements
6 on social media -- various social media platforms -- about this
7 case.

8 THE COURT: What comments has he made?

9 MR. BHATIA: He made a comment I think about how he is
10 going to come here and beat the United States government, and
11 something about eating the government's case for lunch and
12 stuff like that.

13 THE COURT: Do you have an application?

14 MR. BHATIA: Yes, we would request that the Court ask
15 the defendant not to make public comments on social media about
16 the case during the pendency of the trial.

17 THE COURT: Defense?

18 MR. BHATIA: I'm sorry. And to take down the comments
19 that have been posted.

20 THE COURT: Defense?

21 MR. GELFAND: We have no objection to that.

22 THE COURT: Look, I didn't think to order it because
23 it struck me as obviously inappropriate for the defendant or
24 his lawyers to be making statements about the case on social
25 media. Please take those down forthwith, and please do not

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1 continue to advocate your position on social media about the
2 case. The case will be tried in the courtroom.

3 OK. I mean any time, Mr. Teman, you do that you
4 create a risk that somebody who is not abiding by my rules will
5 stumble upon your statements. It may be to your benefit, it
6 may be to your detriment, but certainly it's to the detriment
7 of the system of justice, anything which will give weight to
8 something that's being said about the case out of court. The
9 government I'm sure is independently heeding that admonition,
10 but it's important that the case be tried in the courtroom
11 only. All right, thank you. And defense, I understand you
12 too consent to that.

13 MR. GELFAND: Yes, your Honor.

14 THE COURT: Let me ask, government, after we have the
15 opening statements, who will your first witness be?

16 MR. BHATIA: The government's first witness will be
17 Karen Finocchiaro. She is the investigator from Bank of
18 America.

19 THE COURT: OK. And I have of course two limiting
20 instructions that I have read to you and you are all fine with.
21 One of them involving the check stock is clearly not implicated
22 by her testimony, but the other involving the RCCs may or may
23 not be. Do you expect there to be testimony from her
24 referencing the concept of a remotely created check?

25 MR. BHATIA: She might get into the concept of

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1 remotely created checks, and I have spoken to defense counsel,
2 and I understand that they will request -- they have requested
3 that the instruction be read as soon as the witness makes the
4 first comment about RCCs.

5 THE COURT: Look, you are the master of the direct
6 examination. Does your examination cover that topic?

7 MR. BHATIA: I believe it does, yes. I'm sorry, it
8 does, your Honor.

9 THE COURT: All right. Look, I mean I'm happy as soon
10 as you have put a question to the witness that elicited an
11 answer referring to that, I am happy for either counsel to give
12 me a prompt that this is a good moment for the RCC instruction.

13 Thinking ahead as well to Ms. Finocchiaro's testimony,
14 are there any other areas where anyone can imagine a limiting
15 instruction being warranted?

16 MR. BHATIA: Not from the government.

17 THE COURT: Defense?

18 MR. GELFAND: No, your Honor. The only other area is
19 the surveillance photo issue, depending on the foundation.

20 THE COURT: Was there any progress made among counsel
21 overnight about that issue?

22 MR. GELFAND: We agreed on every other Bank of America
23 exhibit; we did not agree on that. I'm not saying that we're
24 going to necessarily object; it just depends on the testimony.

25 THE COURT: In other words, it's not stipulated to.

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1 And, Mr. Bhatia, again you're not obliged to tip your
2 hand, but were you able to shore up or make progress with
3 respect to the authentication issue that was addressed
4 yesterday?

5 MR. BHATIA: We do believe that she will be able to
6 lay the proper foundation.

7 THE COURT: Very good. OK. Then take a five minute
8 comfort break. I will be back in five minutes. Mr. Smallman
9 will reposition the podium here before we resume.

10 (Recess)

11 THE COURT: Members of the jury, now that you have
12 been sworn, I want to give you some preliminary instructions to
13 guide you in your participation in this trial.

14 To begin with, you are here to administer justice in
15 this case according to the law and the evidence. You are to
16 perform this task with complete fairness and impartiality, and
17 without bias, prejudice or sympathy for or against the
18 government or the defense.

19 It will be your duty to find from the evidence what
20 the facts are. You and you alone will be the judges of the
21 facts. You will then have to apply those facts to the law as
22 the Court will give it to you. You must follow that law
23 whether you agree with it or not. Nothing the Court may say or
24 do during the course of this trial is intended to indicate or
25 should be taken by you as indicating what your verdict should

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1 be.

2 The evidence from which you will find the facts will
3 consist of the testimony of witnesses, documents and other
4 things received into the record as evidence, as well as any
5 facts that the parties agree or stipulate to, or that the Court
6 may instruct you to find.

7 Certain things are not evidence and must not be
8 considered by you, and I'm going to list them for you now.

9 First of all, statements, and argument and questions
10 by lawyers are not evidence, nor are my own statements to you
11 evidence. Only the answers given by witnesses are evidence.

12 Second, objections to questions are not evidence. The
13 lawyers have an obligation to their clients to make an
14 objection when they believe evidence being offered is improper
15 under the rules of evidence. You should not be influenced by
16 the Court's ruling on an objection. If I sustain an objection,
17 you should ignore the question. If I overrule the objection,
18 you should treat the answer just like any other. If you are
19 instructed that some type of evidence is being received for a
20 limited purpose only, you must follow that instruction.

21 Third, testimony the Court has excluded or told you to
22 disregard is not evidence and must not be considered.

23 Finally, anything you may have seen or heard outside
24 the courtroom is not evidence and must be disregarded. You are
25 to decide this case solely on the evidence presented here in

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1 this courtroom.

2 Now, when you are determining the facts, keep in mind
3 that there are really two types of evidence: Direct evidence
4 and circumstantial evidence. Direct evidence is direct proof
5 of a fact, such as the testimony of an eye witness.
6 Circumstantial evidence is proof of facts from which you may
7 infer or conclude that other facts exist. And the word "infer"
8 or the expression to draw an inference simply means to find
9 that a fact exists from proof of another fact. An inference is
10 to be drawn only if it's logical and reasonable to do so, not
11 by speculation or guesswork. In a moment I will give you an
12 example that I think will make this all very clear.

13 In deciding whether to draw an inference, you must
14 look at and consider all of the facts in light of reason,
15 common sense and experience. Whether a given inference is or
16 is not to be drawn is entirely a matter for you the jury to
17 decide. Circumstantial evidence doesn't necessarily prove less
18 than direct evidence, nor does it necessarily prove more.

19 And here is an example to help you think about the
20 difference between direct and circumstantial evidence. Let's
21 assume that when you came into the courthouse this morning, the
22 sun was shining and it was a nice day outdoors, and let's also
23 assume that the courtroom blinds here were closed, they were
24 drawn, so you couldn't look outside. And let's assume further
25 that as you were sitting here somebody walked in with an

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1 umbrella that was dripping wet and a few moments later someone
2 else walked in with a raincoat that was dripping wet.

3 Now, because you couldn't look outside the courtroom,
4 and you couldn't see whether it was raining, because there is
5 no witness on the witness stand saying it's raining outside,
6 you wouldn't have any direct evidence of the fact that it was
7 range, but on the combination of facts that I have asked you to
8 assume it would be reasonable and logical for you to conclude
9 that it had begun to rain.

10 That's all there is to circumstantial evidence. You
11 are inferring on the basis of reason, experience and common
12 sense from one established fact -- all these dripping, wet
13 raincoats and umbrellas -- the existence or nonexistence of
14 some other fact it's begun to rain. I will give you more
15 instructions on this, as well as other matters, at the end of
16 the case. The important point right now to keep in mind is
17 that you can consider both types of evidence.

18 One of most important tasks as jurors is to evaluate
19 the credibility of the witnesses who will appear before you --
20 that is, how truthful and believable they are. Listen
21 carefully as each witness testifies during both direct and
22 cross-examination, and consider whether the witness is telling
23 the truth. It will be up to you to decide which witnesses to
24 believe, which witnesses not to believe, and how much of any
25 witness's testimony to accept or to reject.

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1 Now, how do you decide what to believe and what not to
2 believe? You are going to listen to the witnesses, observe
3 their testimony, and then decide as you would decide such
4 questions in your own life. Did they know what they were
5 talking about? Were they candid, honest, open and truthful?
6 Did they have a reason to falsify, exaggerate or distort their
7 testimony? Sometimes it's not what a witness says but how he
8 or she says it that may give you a clue as to whether or not to
9 accept that witness's version of an incident or an event as
10 credible and believable.

11 In short, the way a witness testifies may play an
12 important part in your reaching a judgment as to whether or not
13 you can accept the witness's testimony as reliable.

14 Under the law, as I mentioned earlier, a defendant in
15 a criminal case is presumed innocent and cannot be found guilty
16 of the crimes charged unless a jury, having heard all of the
17 evidence in the case, unanimously decides that the evidence
18 proves the defendant guilty beyond a reasonable doubt.

19 In a criminal case the burden of proof always remains
20 with the prosecution -- the government. For the jury to return
21 a verdict of guilty as to the defendant, the government must
22 prove that the defendant is guilty beyond a reasonable doubt.
23 A person charged with a crime has absolutely no burden to prove
24 that he is not guilty, and if the defendant chooses not to
25 present any proof, that decision cannot be held against him and

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1 may not enter into your deliberations at all.

2 Now, a few words about your conduct as jurors.

3 First, during the trial you are not to discuss the
4 case with anyone, nor are you to permit anyone to discuss it
5 with you. This includes posting anything on the Internet about
6 the case, whether it be on personal blogs, Facebook or Twitter.
7 Until you retire to the jury room at the end of the case to
8 deliberate you simply are not to talk about this case with
9 anyone, including your partner, family or close friends. Do
10 not even discuss the case with each other until you begin your
11 actual deliberations at the end of the trial.

12 Second, please do not while you are serving as jurors
13 in this trial have any conversations with the parties, the
14 attorneys, or any witnesses in this case, whether in the
15 courtroom, the hallways, the elevators, outside or anywhere
16 else. And by that I mean not only avoid talking about the
17 case, don't talk to them at all, even to say good morning or to
18 acknowledge any of these people. As I explained briefly
19 earlier, somebody seeing a juror in conversation with a party,
20 a lawyer or a witness might think that something improper was
21 being discussed, and to avoid even the appearance of
22 impropriety avoid any such contact or conversation. And so I
23 can tell you that when the parties, lawyers and witnesses pass
24 you in the hall without even acknowledging your presence, they
25 don't mean to be rude; they are simply following my

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1 instruction.

2 Third, do not read or listen to anything outside the
3 courtroom that relates to this case in any way. And,
4 similarly, you are not to allow anyone to speak with you about
5 the case. If you were approached by anyone to speak about it,
6 politely but firmly tell them that the judge has directed you
7 not to do so. If any person seeks to contact you about this
8 case, you are required to report the incident promptly to me by
9 sending me a note through my courtroom deputy Mr. Smallman.

10 Also, please be sure that I'm informed if any person
11 you know comes into this courtroom. This is a public trial,
12 and so at least in theory that could happen. But it's
13 important that you do not hear from them about what may have
14 happened in the court while the jury was not present. If you
15 should see a friend or relative come into court, send me a note
16 through Mr. Smallman at your first opportunity.

17 Fourth, do not try to do any research or make any
18 investigation about the case or the issues presented by the
19 case. For example, do not go onto the Internet tonight and
20 research any matters relating to this case. Do not call up
21 your lawyer friends and ask about the type of matters at issue
22 in the case.

23 Fifth, I know that many of you use cell phones,
24 iPhones, BlackBerries, the Internet, and all sorts of other
25 tools of technology. You must not use these tools to

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1 communicate electronically with anyone about the case. That
2 includes your family and friends. You may not communicate with
3 anybody about the case on your cell phone, meaning iPhones,
4 e-mails, text messaging, Twitter, any blog or website, any
5 Internet chat room, or by any way or any social networking
6 website. That means nothing on Facebook, LinkedIn, Youtube,
7 the full gamut. If I haven't listed a website, it doesn't mean
8 can you go access the case or communicate about it. The answer
9 is it's a complete no, you can't do that.

10 And, finally, do not form any opinion until all of the
11 evidence is in. The case can be presented only step by step,
12 witness by witness, until all the evidence is before you. Keep
13 an open mind until you start your deliberations at the end of
14 the case.

15 Now, note taking. Mr. Smallman has given each of you
16 a note pad and a pen, and you are permitted take notes during
17 the trial. Please write your name on the cover of the pad. If
18 you do take notes, please do so only in these pads.

19 Remember that any notes you take are for your use
20 only, and they are only to be used as an aid for your memory.
21 Your memory controls. If you do take notes, be careful not to
22 get so involved or wrapped up in the note-taking process that
23 you're not listening to the evidence. Once you are in your
24 deliberations, if there is a disagreement between one juror's
25 notes and another juror's notes, or between one juror's notes

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1 and another juror's recollection, or one juror's recollection
2 and another juror's recollection, there is a solution for that.
3 You can ask to have the court reporter read back the portion of
4 the testimony that is germane to the disagreement you are
5 having, or we can have that portion of the transcript sent back
6 to you to the jury room, because ultimately it's the official
7 court transcript that controls, not any juror's notes.

8 During the course of the trial, exhibits will be
9 received into evidence, and they will be marked by exhibit
10 number. So, if there is an exhibit that are you particularly
11 interested in seeing, or seeing more of than you have seen here
12 in the courtroom, write down the exhibit number, and when you
13 are in your deliberations, you will be able to ask to see the
14 exhibit. We will also be giving you a list of all witnesses
15 who testified during the trial as well as a list of all
16 exhibits that were received during the trial, and that will in
17 turn help you in calling for or identifying any material you
18 want to see while you are in your deliberations.

19 We are now going to begin the evidence portion of the
20 trial. As I said earlier this morning, we are going to begin
21 each day promptly at 9:30 and continue until approximately 5
22 p.m. Please, please be on time. If any of you are late, we
23 have to wait because we can't start until all of you are here.
24 And all of us -- meaning me, the lawyers, the parties, and the
25 witnesses and your fellow jurors -- will have to wait. If we

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1 lose ten, 20 minutes each day because somebody is late, we may
2 not be able to get the trial completed on the day that we
3 otherwise would have been able to do so.

4 Let me tell you now how the trial will proceed.
5 First, we're going to have opening statements. The government
6 is going to make an opening statement, and after that I expect
7 the attorney for the defendant will make an opening statement
8 as well, but they are not required to do so. The opening
9 statements are neither evidence nor argument. They are simply
10 outlines of what the attorneys believe the evidence will show,
11 and they are given to help you follow the evidence as it is
12 presented.

13 After the opening statements, the government will
14 present its case. The government will call its witnesses, and
15 after each witness testifies on direct examination, counsel for
16 the defendant will have an opportunity to cross-examine the
17 witness. After the cross-examination, there may be a little
18 bit of what we call redirect and recross examination.

19 After the government's case, the government will rest.
20 The defendant may then present a defense case if he wishes.
21 But, again because of the presumption of innocence, the
22 defendant is not required to present or offer any proof. If
23 the defendant does present the defense case, the defense
24 witnesses will testify, and the government will have an
25 opportunity to cross-examine them.

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Opening - Mr. Bhatia

1 After the evidence is completed and all sides have
2 rested, the attorneys will give their summations, and this is
3 the opportunity for the lawyers to summarize the evidence and
4 to give their closing arguments to you about what it has or has
5 not shown.

6 After the summations, I will give you instructions on
7 the law, and you will then finally retire to deliberate on your
8 verdict.

9 You have a tremendously important task as jurors, it
10 is to determine the facts. You, and not the court, are the
11 sole judge of the facts. The Constitution itself recognizes
12 your unique role in our system of justice, and so, please, pay
13 careful attention to the witnesses and the evidence received at
14 trial as well as my instructions on the law.

15 With that, we will now begin with counsel's opening
16 statements. Mr. Smallman, would you put the microphone by the
17 lectern, and we will hear first from the government.

18 Mr. Bhatia, you may proceed.

19 MR. BHATIA: This is a case about greed, fraud and
20 theft. This is a case about how this man, the defendant, Ari
21 Teman, carried out a brazen scam to steal his own clients'
22 money. You see, the defendant had a business, and he decided
23 that some of his customers owed him money. And what did he do?
24 He decided to steal it right out of their bank accounts.

25 The defendant created dozens of checks, fake checks,

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Opening - Mr. Bhatia

1 drawn against his customers' bank accounts. He pretended that
2 his customers had authorized him to deposit those checks, but
3 that was a blatant lie. None of the customers even knew he was
4 going to take the checks out of their account, and none of them
5 had ever told him that he was able to do that. It was all part
6 of the defendant's scheme to treat his customers' bank accounts
7 as his own personal piggy bank. It was theft, plain and
8 simple.

9 Using these fake checks, the defendant stole hundreds
10 of thousands of dollars from his customers, money that was not
11 his, money that he did not have permission to take, and money
12 that he used to line his own pockets.

13 Ladies and gentlemen, this opening statement is the
14 government's opportunity to outline what the evidence will
15 show, so let's discuss in more detail what you will hear and
16 see during the trial.

17 You will learn that the defendant had a business where
18 he sold intercom units to apartment buildings. The defendant
19 told the customers that these intercoms would allow residents
20 to speak with people who were at the door and hear what they
21 were saying. After hearing the defendant's sales pitch some
22 customers, including some here in New York, decided to buy one
23 of his intercom systems. They paid him a few thousand dollars
24 for each intercom, and they paid him using checks from their
25 own bank accounts. You will hear that after the customers paid

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Opening - Mr. Bhatia

1 the defendant they immediately started having problems with the
2 intercom. The intercoms didn't work properly, and the
3 customers complained to the defendant. Some of them decided
4 they had to stop using the intercoms.

5 How did the defendant react? He got angry, very
6 angry. You called them names, he called them liars. He wasn't
7 happy they were doing business with him. He still wanted their
8 money.

9 Did the defendant try to resolve this dispute in a
10 civilized way? No. Did he file a lawsuit saying they owed him
11 money, like he said he would do over and over? No. Instead
12 the defendant the evidence will show that the defendant came up
13 with a scam to steal their money, a blatant scam to take
14 thousands and thousands of dollars right out of their bank
15 accounts, without their knowledge and without their permission.

16 You will learn that the defendant created these
17 checks -- these fake checks -- from scratch, entirely from
18 scratch, 29 checks in total. The defendant knew the customers'
19 bank accounts numbers because they had written him checks, and
20 at the bottom of those checks was the account number. He took
21 that number and put them on the checks that he created.

22 Using those checks, these fake checks, he deposited
23 them into his own bank account. Some of the checks were worth
24 \$5,000, some were worth \$10,000, and some of the checks were
25 worth \$18,000; more than \$300,000 in total, \$300,000.

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Opening - Mr. Bhatia

1 The defendant pretended that the checks were issued
2 with his customers' permission. That was a blatant lie. Did
3 the defendant ask his customers if he could create or deposit
4 the checks? No. Did he ask for their permission to take this
5 money out of their bank account? No. Instead, he created the
6 checks without their knowledge and without their permission and
7 then deposited the checks into his own bank account.

8 You will hear that the defendant came up with a false
9 cover story to try to trick the banks into thinking that these
10 were authorized checks. On some of the checks he scribbled a
11 fake signature and wrote that the checks were authorized by a
12 so-called contract. That was a lie. On other checks he put a
13 link to his website. Buried in that link was another link, and
14 there, in a long list of fine print, was the way the defendant
15 created a false appearance that he was allowed to take this
16 money. In reality, these were lies and the checks were fake,
17 checks the defendant created from scratch without his
18 customers' knowledge and without their permission. It was a
19 blatant fraud.

20 And the defendant used other tricks to fool the banks.
21 You will see that he put his own phone number on the checks and
22 told the banks to call him, not the customers, if the banks had
23 any questions. You will see that the defendant falsely stated
24 on the memo line of these checks -- that's where you can put a
25 description of what the check is for -- that these were for

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Opening - Mr. Bhatia

1 payments for bogus fees that the customers had never agreed to
2 pay. All of these were lies to trick the bank into accepting
3 the check.

4 Some of the defendant's customers -- now his
5 victims -- eventually saw the fraudulent checks when they
6 looked into their bank records. Some of them heard about the
7 checks when their banks reached out about potentially
8 fraudulent activity.

9 When they saw the checks -- when the customers saw the
10 checks -- they were shocked. They realized that someone had
11 written fake checks from their account without their
12 authorization, without their permission, and without ever
13 telling them.

14 When the defendant deposited these fake checks, the
15 money came out of his customers' account, and money was put
16 into the defendant's account. Again, more than \$300,000 in
17 total. The defendant drained the money out of his bank account
18 where he deposited the checks and sent it to other accounts
19 that he owned. Those accounts included his personal bank
20 account. You will see that he also withdrew some of the money
21 in cash. In one case he had withdrawn \$4,000 from a bank
22 teller here in Manhattan.

23 Not surprisingly, the defendant's scheme came crashing
24 down and he got caught. The banks learned that the defendant's
25 checks were fake and that the customers had never given

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Opening - Mr. Bhatia

1 authorization for him to create and issue checks without
2 telling them. But Bank of America -- this is where the
3 defendant deposited the checks -- was stuck holding the bag.
4 Bank of America found out about the fraud, and it had to pay
5 back money to the defendant's customers.

6 Now, ordinarily they might take that money out of the
7 money he deposited and send it back, but in this case the
8 defendant had already transferred that money into his other
9 accounts, so Bank of America wasn't able to get that money.
10 And you will see records and hear testimony that Bank of
11 America had to pay about \$260,000 out of its own money to repay
12 the defendant's customers. That's \$260,000 because of the
13 defendant's fraud.

14 So that's an overview of what we expect the evidence
15 will show: The defendant created fake checks from scratch
16 without his customers' knowledge, without their permission, and
17 deposited them into his own bank account.

18 Let me now tell you how we are going to prove it to
19 you. As a general matter, during this trial you will hear from
20 witnesses and you will see documents. You will hear testimony
21 that the defendant's customers -- the people the defendant
22 stole from -- they will tell you about their dealings with the
23 defendant and how the defendant demanded money. You will hear
24 about his threats. You will learn about their shock and
25 distress when they learned that the defendant had issued checks

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Opening - Mr. Bhatia

1 for tens of thousands of dollars written right out of their
2 accounts and without telling them.

3 The defendant never asked if he could take that money.
4 In fact, the customers will tell you that if the defendant had
5 ever asked, if they had given him permission to take money out
6 of their accounts whenever he thought he deserved it, they
7 would never have given it to him.

8 You will also hear from bank representatives. A Bank
9 of America employee will testify, and she will tell you how the
10 defendant created fake checks, show you what the defendant did
11 with that money, and explain how Bank of America lost hundreds
12 of thousands of dollars by having to pay the defendant's
13 customers.

14 You will also hear from employees at other banks where
15 the defendant's customers had their own bank accounts. Those
16 individuals will tell you how the banks -- at first unaware of
17 the defendant's fraud -- had processed the checks, sent money
18 out of those accounts, causing hundreds of thousands of dollars
19 to be withdrawn from the customers' accounts without their
20 permission.

21 You will also see documents during the course of this
22 trial. You will see for yourselves the fake checks that the
23 defendant created. You will see the way the defendant crafted
24 those checks to create the false appearance that his customers
25 had authorized them.

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Opening - Mr. DiRuzzo

1 You will see bank records showing the hundreds of
2 thousands of dollars that were taken out of the customers'
3 accounts and put into the defendant's accounts. You will also
4 see the way the defendant transferred the money out of that
5 account where he deposited it, and you will see how he spent
6 and withdrew the money.

7 You will also see e-mails. You will see e-mails
8 between the defendant and his customers. You will see how the
9 defendant got angry when his customers complained about their
10 product. You will see how he got angry when they told him that
11 they were done with it. You will also see how he crafted his
12 fake, bogus cover story to try to cover up his scheme and to
13 get away with it.

14 So that's an overview of the types of evidence you
15 will see and hear about the defendant's fraud scheme. I am
16 going to sit down in a moment. At the end of this trial, after
17 you have seen all the evidence and heard from all the
18 witnesses, I will have another opportunity to speak with you.
19 Until then, I ask you to do three things:

20 First, pay close attention to the evidence. Second,
21 follow Judge Engelmayer's instructions on the law. Finally,
22 use your common sense, the same common sense that you use in
23 your everyday lives.

24 If you do those three things, you will reach the only
25 verdict that is consistent with the evidence, with the law and

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Opening - Mr. DiRuzzo

1 with your common sense: That the defendant, Ari Teman, is
2 guilty as charged.

3 THE COURT: All right. Thank you, Mr. Bhatia.

4 Mr. DiRuzzo.

5 MR. DIRUZZO: Thank you, your Honor. May it please
6 the Court, counselors, ladies and gentlemen of the jury.

7 I am Joseph DiRuzzo. Along with Mr. Gelfand we
8 represent Mr. Ari Teman.

9 Ladies and gentlemen, this criminal case is about one
10 thing: Did Ari Teman have the criminal intent to commit the
11 four crimes alleged in the indictment? The answers are clear:
12 No.

13 The evidence will show that Mr. Teman had no criminal
14 intent, which is a complete defense to all four crimes,
15 because, one, his company, GateGuard, had written contracts
16 with express payment terms with all of its customers, including
17 the ones at issue in this case, that permitted GateGuard to
18 create and deposit remotely created checks when money was due
19 and owing to GateGuard; and, two, that before doing the acts
20 that the government claims were crimes, Mr. Teman took the
21 extra cautious step of consulting with his long-time attorney
22 to make sure that what he was doing was legal. But each of
23 these two important facts reflect what this case is really
24 about: That Mr. Teman never intended to defraud any bank nor
25 defraud any of GateGuard's customers, and that whether he had

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Opening - Mr. DiRuzzo

1 any intention of fraud is what this entire case is about. This
2 is not a civil case.

3 While the events that occurred in March and April of
4 last year form the events that are alleged in the indictment,
5 like all stories there is a bit of background information that
6 you need to know. Ari Teman has a college education and an
7 entrepreneurial spirit, but he is not a lawyer. He has never
8 attended law school. By day he runs start-up tech companies,
9 and on the side he performs as a stand-up comedian.

10 One of Mr. Teman's tech start-ups is called GateGuard,
11 and the evidence will show that GateGuard was formed by Mr.
12 Teman in 2016. GateGuard is a technology company that provides
13 an integrated hardware and software platform for use in
14 apartments, co-ops and condo apartments.

15 GateGuard integrated facial recognition, the Internet
16 and an intercom system to allow for more secure entry and exit
17 into buildings. Individuals would have their face scanned,
18 which would in turn allow the building to know exactly who was
19 entering and when. This allowed buildings to be sure that
20 people who were on the lease were the actual tenants, that
21 illegal Airbnbs weren't occurring, and that guests and delivery
22 people coming and going into buildings were properly logged and
23 tracked. This information was provided to the building/clients
24 of GateGuard as a function of the GateGuard platform.

25 When Mr. Teman formed GateGuard there were no face

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Opening - Mr. DiRuzzo

1 recognition/point of entry systems on the market, and with most
2 new technology companies getting GateGuard up and running from
3 proved concept to the market cost Mr. Teman a lot of money.
4 But when GateGuard was up and running, Mr. Teman marketed
5 GateGuard throughout the country, and you will hear evidence --
6 and I don't believe it will be in dispute -- that GateGuard had
7 clients throughout the country, major metropolitan areas, and
8 in particular New York City.

9 During the time period alleged in the indictment, and
10 continuing to today, GateGuard has several hundred customers
11 using its products; however, we fully admit that in the
12 beginning there were certain bugs in the product that required
13 troubleshooting. However, you will also hear that GateGuard
14 actively worked to resolve these bugs, and Mr. Teman himself
15 was active in the product improvement.

16 Now, of the several hundred customers that GateGuard
17 had -- or has -- like all businesses there are a few problem
18 clients, and you will hear about the three problem customers in
19 this case: ABJ, Coney Realty and Mercer Realty, which
20 represent approximately one percent of GateGuard's customers.

21 You will also hear that ABJ, Coney and Mercer were
22 some of the first customers of Gateway. The evidence will show
23 that anyone who wanted to sign up as a customer of GateGuard --
24 including the three at issue here -- had to sign up at
25 GateGuard's website. There was no other way to be a GateGuard

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Opening - Mr. DiRuzzo

1 customer.

2 The way that it works is that everyone input their
3 information into the computer system via the website, just like
4 do for iTunes, just like you do for Netflix. There were no
5 exceptions.

6 Further, you will hear that when someone signed up for
7 GateGuard there was a prompt that informed the customer that it
8 was bound by GateGuard's terms and conditions and GateGuard's
9 payment conditions, which I will collectively refer to as the
10 GateGuard contract. You will see that the terms and condition
11 and payment terms as it governed the nature of the contractual
12 relationship between GateGuard, Coney, ABJ and Mercer.

13 Further, in the event the government doesn't show you the
14 GateGuard terms and conditions -- the GateGuard payment
15 terms -- we will introduce these documents into evidence
16 ourselves for your consideration.

17 Now, turning to the terms and conditions. That
18 document is 17 pages and is relevant here. Section 5 addressed
19 orders and fees.

20 Pricing: GateGuard customers expressly agreed to the
21 pricing terms which were referenced in Section 5 and
22 hyperlinked to GateGuard's website. Additionally, the
23 GateGuard terms and conditions had a severability clause that
24 meant if any provision of the terms and conditions was
25 unenforceable, the rest of the contract was still valid.

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Opening - Mr. DiRuzzo

1 Now, turning to the pricing. The pricing is listed
2 out in painful detail, all the fees that a GateGuard customer
3 will be responsible for. There were sections including, among
4 others, court appearances, charge-back fees, nonpayment fees,
5 cancellation fees, etcetera. And as is especially important
6 here, the pricing terms included a section on payment and a
7 section on authorization to make bank withdrawals.

8 Now, these two interlocking provisions detail not only
9 how GateGuard could obtain payment from its not-paying clients
10 but the reasoning behind it. Specifically, the pricing
11 agreement allowed GateGuard to charge its clients via ACH or
12 debit, and it also expressly gave GateGuard "permission to
13 write and sign checks with your checking and/or savings account
14 information to do a bank draw against your entity (or entities)
15 for the amount it or they owe."

16 A check from another person's account or another
17 business' account based on advanced authorization is known as a
18 remotely created check. You will hear it referred to in this
19 case as an RCC. And we anticipate at some point you will hear
20 a little more from the judge about the definition of an RCC.
21 But you will hear testimony, and you will see e-mails from Mr.
22 Teman to the three customers at issue -- ABJ, Coney and
23 Mercer -- informing each that there was a contract, and that
24 the contract allowed GateGuard to receive payments from each
25 customer.

K1M7TEM3

Opening - Mr. DiRuzzo

1 As to Coney, you will see an e-mail from Mr. Elie
2 Gabay to Mr. Teman where Mr. Gabay e-mails Mr. Teman with
3 proposed changes -- what attorneys refer to as a markup or a
4 red lined document -- to the GateGuard terms and conditions.
5 While none of these edits or mark-ups or changes to the
6 GateGuard terms and conditions were accepted by Mr. Teman,
7 Mr. Gabay clearly read the terms and conditions and even marked
8 up Section 5 that addressed the pricing.

9 Now, as to Mercer, you will see an e-mail from Bonnie
10 Soon-Osberger where she acknowledges she reviewed the terms and
11 conditions. She e-mailed Mr. Teman with questions about the
12 terms and conditions. Mr. Teman responded via e-mail and
13 replied to her, and Ms. Soon-Osberger begged Mr. Teman for his
14 timely reply, and she acknowledged that Mr. Teman had addressed
15 Mercer's concerns about the terms and conditions.

16 Now, as to ABJ, you will see invoices from GateGuard
17 to ABJ, where at the bottom of each invoice is a prominent
18 display that "payor accept terms at
19 GateGuard.XYZ4/legal/4/turns.php."

20 Further, you will also see that Mr. Teman's attorney,
21 Mr. Ariel Reinitz, e-mailed Joe Soleimani, one of ABJ's
22 principals, and Mr. Reinitz reiterated to ABJ that ABJ had a
23 binding contract with GateGuard. And Mr. Reinitz, on behalf of
24 GateGuard, even provided hyperlinks to Mr. Soleimani of both
25 GateGuard's terms and conditions and the pricing document

K1M7TEM3

Opening - Mr. DiRuzzo

1 itself.

2 So you will see -- and the if the government does not
3 introduce it, we intend to introduce this document ourselves --
4 the RCCs that the government alleges were counterfeit checks.
5 But you will see on every single check, every single RCC, on
6 the bottom right-hand side, a statement "draw per contract, no
7 signature required."

8 You also will see in the majority of these checks the
9 government alleges to be counterfeit, the RCCs, that the
10 language is even more transparent in that "draw per contract,
11 no signature required. Note to bank: Call me. This is a
12 valid check. You are required by law to honor it. Contact at
13 GateGuard.XYZfor/legal/for/terms.phb accepted by the above
14 client. Contact us at 212-203-3714 with questions."

15 The evidence will show that before these RCCs were
16 created, Mr. Teman sought and obtained the legal advice of his
17 attorney -- his long-time attorney, Mr. Aerial Reinitz -- and
18 Mr. Reinitz conducted his review of the GateGuard terms and
19 conditions and pricing, and Mr. Reinitz concluded that there
20 was a valid contract, that the contract was enforceable, and
21 that the contract allowed for GateGuard to be paid via RCC, the
22 very RCCs that the government alleges are counterfeit.
23 Mr. Reinitz provided this legal advice to Mr. Teman. Mr. Teman
24 justifiably relied on his legal advice, and Mr. Teman acted in
25 accordance with the legal advice that he was given by his

K1M7TEM3

Opening - Mr. DiRuzzo

1 attorney.

2 Consequently, Mr. Teman deposited these checks in a
3 banker of America branch in Miami Beach, Florida, where its
4 company headquarters were located.

5 Now, Mr. Teman did not hide his identity, he didn't go
6 in there with any type of disguise, and he used his driver's
7 license to identify himself. Bank of America placed a one-week
8 hold on the deposit, and unfortunately ABJ disputed the
9 validity of these checks. In response, GateGuard and Mr.
10 Teman's attorney, Mr. Reinitz, proactively reached out to Bank
11 of America and informed Bank of America that all the RCCs were
12 fully agreed to by GateGuard's customers and were consistent
13 with the GateGuard payment plans. Mr. Reinitz e-mailed Bank of
14 America with copies of the terms and condition, the payment
15 terms, and provided a detailed explanation of why the RCCs were
16 appropriate, and in all events this was a billing dispute
17 between GateGuard and GateGuard's customers. If The government
18 does not introduce this e-mail into evidence, we intend to show
19 it to you so you can review it and consider it yourself.

20 Now, at the end of the day everything that GateGuard
21 and Mr. Teman did was transparent and authorized with
22 GateGuard's terms, conditions and payment terms, the GateGuard
23 contract.

24 Now, ladies and gentlemen of the jury, I will end
25 where I began: Mr. Teman is not guilty of any crime because

K1M7TEM3

Opening - Mr. DiRuzzo

1 the checks were not counterfeit; instead, ABJ, Coney and Mercer
2 all provided GateGuard with the contractual authorization to
3 issue the RCCs that are at issue here, and moreover, Mr. Teman
4 had no criminal intent as he sought and obtained legal advice
5 from Mr. Reinitz, who specifically informed Mr. Teman that he
6 was legally able to issue the RCCs as provided for in the
7 pricing portion of the GateGuard contract.

8 Now, at the end of this trial, ladies and gentlemen,
9 we are going to be asking for you to return a not guilty
10 verdict, because we do not believe -- nor will the government
11 be able to show -- that Mr. Teman committed a crime here.

12 THE COURT: Thank you, Mr. DiRuzzo.

13 (Continued on next page)
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K1MVTEM4

Finocchiaro - direct

1 MR. BHATIA: The government calls Karen Finocchiaro.

2 KAREN FINOCCHIARO,

3 called as a witness by the Government,

4 having been duly sworn, testified as follows:

5 THE COURT: Good afternoon, Ms. Finocchiaro.

6 Welcome to the Court.

7 I'll ask you to please project your voice. This an
8 old and big courtroom and the acoustics aren't great.

9 Counsel, you may inquire.

10 DIRECT EXAMINATION

11 BY MR. BHATIA:

12 Q. Ms. Finocchiaro, where do you work?

13 A. Bank of America.

14 Q. What's your title there?

15 A. A vice president and senior fraud investigator.

16 Q. And how long have you been at Bank of America?

17 A. Twenty-three years.

18 Q. And prior to being a senior investigator, what role did you
19 have at the bank?

20 A. I was a strategic analyst.

21 Q. As a senior fraud investigator, what are your day-to-day
22 responsibilities?

23 A. I conduct our fraud investigations for our enterprise, for
24 everything from our credit card portfolio, our checking
25 accounts, and savings accounts.

K1MVTEM4

Finocchiaro - direct

1 Q. Approximately how many investigations have you conducted
2 involving fraudulent checks?

3 A. Thousands.

4 Q. And what about investigations involving returns of checks
5 between banks?

6 A. Thousands.

7 Q. Senior Investigator Finocchiaro, what is a check at a very
8 basic level?

9 A. A check is a paper item. The check typically has the
10 maker's information in the upper left-hand corner, date, it has
11 a signatory line, a memo line, and a pay to the order line.

12 Q. And what does it mean for a check to be deposited?

13 A. It's when a check is negotiated at a financial institution
14 or an ATM or cashed by a subject. So it would be -- to be
15 negotiated is to be signed, made out to, made payable to, and
16 conducted.

17 Q. Is a deposit essentially when someone gives the check to
18 the bank to start the payment process?

19 A. That is correct.

20 Q. And when a check is deposited, what happens next?

21 A. So once the check is deposited, we have two processes: For
22 larger financial institutions, the checks will go through a
23 bank-to-bank process. In other situations, for smaller
24 financial institutions, they do go through the Federal Reserve
25 versus going through the clearinghouse.

K1MVTEM4

Finocchiaro - direct

1 Q. Is JPMorgan one of those larger banks?

2 A. Yes, it is.

3 Q. So that goes through the interbank process?

4 A. Right, it goes through the interbank clearing.

5 Q. What about Signature Bank?

6 A. Signature Bank is a smaller financial institution, so those
7 checks will process through the Federal Reserve.

8 Q. And ultimately, does a check transfer money between one
9 account to another account?

10 A. Yes, it does.

11 Q. And can it also be used to transfer money between banks?

12 A. Yes, it is.

13 MR. BHATIA: Your Honor, with the Court's permission,
14 I'd like to read Government Exhibit 501, which is a stipulation
15 between the parties.

16 THE COURT: Very good.

17 Before Mr. Bhatia reads a stipulation, let me just
18 explain for a moment what a stipulation is.

19 A stipulation is an agreement between the parties that
20 a particular fact or facts is true. You are required to accept
21 that stipulation as true, as accurate, what is contained
22 therein. The lawyers have agreed that these facts are true.

23 It is for you, the jury, to decide what weight, if
24 any, you give to the fact that the parties have agreed upon.

25 Counsel, you may do so.

K1MVTEM4

Finocchiaro - direct

1 MR. BHATIA: Government Exhibit 501, bank record
2 stipulation.

3 It is hereby stipulated and agreed, by and between the
4 United States of America, by Geoffrey S. Berman, United States
5 Attorney, Kedar S. Bhatia and Edward Imperatore, Assistant
6 United States Attorneys, of counsel, and Ari Teman, the
7 defendant, by and through his counsel, Justin Gelfand, Esq. and
8 Joseph DiRuzzo, Esq., that:

9 Government Exhibits 101, 102, 201, 202, 203, 204, 205,
10 and 206; and Defense Exhibits 17, 34, and 52 are true and
11 correct copies of bank records from bank accounts at Bank of
12 America North America in the name of GateGuard Inc., with
13 account number ending in 8085.

14 Government Exhibits 103 and 104 are true and correct
15 copies of bank records from a bank account at Bank of America
16 North America in the name of Friend or Fraud, Inc., with
17 account number ending in 0351.

18 Government Exhibits 105 and 106 are true and correct
19 copies of bank records from a bank account at Bank of America
20 North America in the name of Touchless Labs LLC, with account
21 number ending in 1046.

22 Government Exhibits 107 and 108 are true and correct
23 copies of bank records from a Bank of America account at Bank
24 of America North America in the name of Ari Teman, with account
25 number ending in 5580.

K1MVTEM4

Finocchiaro - direct

1 Government Exhibit 113 is a true and correct copy of
2 bank records from bank accounts at Bank of America North
3 America in the name of GateGuard, Inc., with account number
4 ending in 8085; in the name of Friend or Fraud, Inc., with
5 account number ending in 0351; in the name of Touchless Labs
6 LLC, with account number ending in 1046; and in the name of Ari
7 Teman, with account numbers ending in 7673 and 5580.

8 Government Exhibits 121, 122, 126, 127, and 130, and
9 Defense Exhibits 50 -- and Defense Exhibit 50, are true and
10 correct copies of bank records from bank accounts at JPMorgan
11 Chase Bank North America in the name of ABJ Lenox LLC, with
12 account number ending in 9100.

13 Government Exhibits 123, 124, 128, 129, and 131, and
14 Defense Exhibits 49 and 51, are true and correct copies of bank
15 records from bank accounts at JPMorgan Chase Bank North America
16 in the name of ABJ Milano, with account number ending in 1672.

17 Government Exhibits 141, 142, and 143, and Defense
18 Exhibit 29, are true and correct copies of bank records from
19 bank accounts at Signature Bank North America in the name of 18
20 Mercy Equity, Inc., with account number ending in 8293.

21 Government Exhibits 144, 145, 146, and 150, and
22 Defense Exhibit 29, are true and correct copies of bank records
23 from bank accounts at Signature Bank North America in the name
24 of 518 West 204 LLC, with account number ending in 6525.

25 The records I described in paragraphs 1 through 9

K1MVTEM4

Finocchiaro - direct

1 above were made at or near the time of the occurrence of the
2 matter set forth in the records by or from information
3 transmitted by a person with knowledge of those matters; B,
4 kept in the course of regularly conducted business activity;
5 and C, made by the regularly conducted business activity as a
6 regular practice.

7 It is further stipulated and agreed that Government
8 Exhibits 101 through 108, 114, 121 through 124, 126 through
9 131, 141 through 146, 150, and 201 through 206, and Defense
10 Exhibits 17, 29, 34, 52, 49, 50, and 51, consist of records
11 that constitute business records pursuant to Rule 803(6) of the
12 Federal Rules of Evidence.

13 The defendant reserves any Rule 10(c) objection to the
14 admission for the truth of the matter asserted of any statement
15 contained in Government Exhibits 126 and 128.

16 Your Honor, with that, I'd offer Government Exhibits
17 101 through 108, 114, 201 through 206 into evidence.

18 THE COURT: Sorry. Give me those numbers again
19 kindly.

20 MR. BHATIA: Government Exhibits 101 through 108, 114,
21 and then Government Exhibits 201 through 206.

22 THE COURT: Is there any objection?

23 MR. GELFAND: No objection, your Honor.

24 THE COURT: All right. I'll receive those exhibits.

25 (Government's Exhibits 101 through 108, 114, 201

K1MVTEM4

Finocchiaro - direct

1 through 206 received in evidence)

2 THE COURT: And Mr. Bhatia, are you also offering the
3 stipulation itself, Exhibit 508?

4 MR. BHATIA: Yes, your Honor.

5 THE COURT: All right. That's received as well.

6 MR. BHATIA: It's 501.

7 THE COURT: 501. Forgive me, 501 is also received.

8 (Government's Exhibit 501 received in evidence)

9 BY MR. BHATIA:

10 Q. Ms. Finocchiaro, back to you.

11 A. Yes.

12 Q. All right.

13 MR. BHATIA: Mr. Magliocco, could you publish
14 Government Exhibit 201 for the jury and for the Court.

15 Mr. Magliocco, could you zoom in on the top portion of
16 the page here.

17 THE COURT: Let me just ask the ladies and gentlemen
18 of the jury, can everybody see the exhibit on your screen? If
19 at any point during the trial you are unable to see something
20 that's being shown to the members of the jury, raise your hand,
21 get my attention and Mr. Smallman's, and we'll be on it.

22 BY MR. BHATIA:

23 Q. Ms. Finocchiaro, are you able to see the check on the
24 screen over there?

25 A. Yes, I am.

K1MVTEM4

Finocchiaro - direct

1 Q. Is this an example of a check?

2 A. Yes, it is.

3 Q. And who is this check addressed to?

4 A. The check is addressed to GateGuard, Inc.

5 Q. And is that shown here on the maybe middle left side of the
6 check?

7 A. Yes, it is. It's in the "pay to the order" section.

8 Q. And does that mean it's written to be deposited into that
9 account?

10 A. Yes, it is.

11 Q. And where is the money -- what account is the money meant
12 to come from?

13 A. It's coming from 518 West 205 LLC, drawn on Signature Bank,
14 account number is in the bottom right-hand corner, as
15 1503226525.

16 Q. And is the account number at the bottom -- what's the
17 relevance of the account number at the bottom in drawing the
18 check?

19 A. That is the account that the funds are to be drawn from and
20 placed into the Bank of America account.

21 Q. So is the bottom number what allows the check to be
22 processed from a given account?

23 A. Yes, it is.

24 Q. Okay.

25 THE COURT: Mr. Bhatia, I'm looking for a good

K1MVTEM4

Finocchiaro - direct

1 stopping point because the jury's mid-afternoon snack has
2 arrived. Let me know when you're at a good you point.

3 MR. BHATIA: I think this is a fine stopping point.

4 THE COURT: All right.

5 Ladies and gentlemen, we'll take a 15-minute recess.

6 As I told you during jury selection, every afternoon
7 we have coffee and treats, if you will. So by all means enjoy
8 in the jury room.

9 As you'll get used to my hearing me say, please do not
10 discuss the case. I'll see you in 15 minutes. Mr. Smallman
11 will bring you out.

12 (Jury not present)

13 THE COURT: Counsel, anything to raise before we take
14 a brief recess?

15 MR. GELFAND: No, your Honor.

16 THE COURT: All right. I'll see you in 12 minutes.
17 Thank you. Just a minute or two before the jury comes down.
18 Thank you.

19 The witness may step down.

20 (Witness steps down)

21 (Recess)

22 THE COURT: Mr. Smallman, let's get the jury. And
23 let's have the witness in the box please.

24 (Jury present)

25 THE COURT: Welcome back, ladies and gentlemen. I

K1MVTEM4

Finocchiaro - direct

1 hope you had a good break.

2 Ms. Finocchiaro, I will remind you you're still under
3 oath.

4 Mr. Bhatia, you may inquire.

5 BY MR. BHATIA:

6 Q. Ms. Finocchiaro, I'm going to hop back into exhibits for a
7 moment. Do you have in the binder in front of you a disk
8 marked as Government Exhibit 113?

9 A. I do, yes.

10 Q. And have you reviewed the contents of that disk?

11 A. Yes, I have.

12 Q. How do you know that's the disk that you reviewed?

13 A. It is the disk -- I signed the disk, actually.

14 Q. And is there one file on that disk or is there more than
15 one?

16 A. There's multiple files.

17 Q. What's the substance of the files on that disk?

18 A. It's actually one spreadsheet. It has multiple tabs. It
19 has tabs containing customer information, specific
20 account-level detail that would be seen on a statement, but
21 it's in a ledger format. It has online banking details. And
22 it has wire transfer information as well.

23 MR. BHATIA: The government offers Government Exhibit
24 113.

25 THE COURT: Any objection?

K1MVTEM4

Finocchiaro - direct

1 MR. GELFAND: No, your Honor.

2 THE COURT: Received.

3 (Government's Exhibit 113 received in evidence)

4 MR. BHATIA: Mr. Magliocco, if you could pull back up
5 Government Exhibit 201. We could take a look again at the
6 check image.

7 Q. Is there a signature featured on this account, on this
8 check?

9 A. There is a signature. There's a squiggly line.

10 Q. And what's the check number that you see?

11 A. The check number is Check No. 1.

12 Q. As a general matter, what is a check number?

13 A. It's the number -- it's the series that we -- that we issue
14 the checks. So you can have Checks 1, 1000, 101. It's just
15 the number of the check.

16 Q. Do checks typically go in a sequence?

17 A. They typically go in a sequence.

18 Q. What's the date listed on this check?

19 A. 3/28 of 2019.

20 Q. Does it identify -- you may have mentioned this earlier,
21 but does it identify the bank where these funds are being drawn
22 from?

23 A. Signature Bank.

24 Q. Is there another way to know which bank the funds are
25 coming from?

K1MVTEM4

Finocchiaro - direct

1 A. The ABA routing number, which is the set of numbers in the
2 middle. That also identifies the financial institution that
3 owns that account.

4 Q. According to Government Exhibit 101, who is the -- who is
5 the person authorized to sign on the GateGuard, Inc. account?

6 A. On the GateGuard, Inc. account, the sole signer is Mr. Ari
7 B. Teman.

8 Q. Okay. Is there a signatory other than Mr. Teman on that
9 account?

10 A. No, there is not.

11 Q. And according to Exhibit 201, was this check deposited into
12 an account at Bank of America?

13 A. Yes, it was.

14 Q. Into what account was this check deposited?

15 A. It was into the GateGuard, Inc. account.

16 Q. And what was the date on which it was deposited?

17 A. The date of deposit was of 3/28 of 2019.

18 MR. BHATIA: Mr. Magliocco, could you please publish
19 Government Exhibit 202. And can we take a look at the check
20 image at the top.

21 Q. Ms. Finocchiaro, who is this check addressed to?

22 A. This check is made out to GateGuard, Inc.

23 Q. That's the same company as the first one, right?

24 A. That is correct.

25 Q. And who is this -- who are the funds purportedly coming

K1MVTEM4

Finocchiaro - direct

1 from?

2 A. They are coming from 18 Mercer Equity, Inc. And the check
3 is drawn off of Signature Bank.

4 Q. Okay. Is there something listed in the memo line?

5 A. There is. So this one indicates "device removal fee."

6 Q. As a general matter, what is a memo line on a check?

7 A. So a memo line is kind of a description. You can just put
8 in a small note of what the actual transaction is relating to.

9 Q. And what's the date listed on this check?

10 A. The date is 3/28 of 2019.

11 Q. And what was the date that this check was actually
12 deposited?

13 A. 3/28 of 2019.

14 Q. And what's the amount stated on this check?

15 A. For 18,000.

16 Q. Is that the same as the amount of the last check?

17 A. Yes, it is.

18 Q. Okay. Have you reviewed records that show how these past
19 two checks were deposited?

20 A. Yes, I have.

21 MR. BHATIA: Mr. Magliocco, could you please publish
22 Government Exhibit 113. And in particular, I'll direct you to
23 the device removal tab -- excuse me, the device tab.

24 Let's take a look at the extended detail tab, and rows
25 38 to 46, if you could highlight those.

K1MVTEM4

Finocchiaro - direct

1 Q. So this is a lot of data. What is -- as a general matter,
2 what does this table show?

3 A. So what this data shows is anytime someone logs into online
4 banking, it does show in the session ID, there's also listed on
5 here the date and the time of the exact login. Column C is an
6 access ID, so it shows the online banking access ID that the
7 customer uses to login.

8 Column D shows the type of browser that's being
9 utilized. Column E would give us a numeric number for a
10 session ID. So column F actually indicates whether it was --
11 what was done within that session, so corresponding to column,
12 I believe, E.

13 Q. A lot of columns.

14 A. It's moving, so -- and then column J gives a detailed
15 description of what was done. So if there's funds that are
16 being transferred, it would show the to and from account
17 number, and it gives IP information as well.

18 Q. Do the highlighted rows here correspond to the checks that
19 you just testified about?

20 A. Yes, they do.

21 Q. Okay. And are you able to see from here how those
22 checks -- how they were literally deposited?

23 A. They were mobile deposit checks.

24 Q. What does "mobile deposit" mean?

25 A. It means that you can capture an image from your mobile

K1MVTEM4

Finocchiaro - direct

1 device and upload that into the online banking environment.

2 And it loads that image into the account.

3 Q. What's the step-by-step process for doing mobile deposit?

4 A. So you would log into your online banking. You would
5 authenticate as being the client. You would then go in, you
6 see your accounts listed. You choose the account that you
7 would like to take action in, so whether you would like to view
8 the deposit history or if you'd like to choose to make a
9 deposit. You would choose the specific account that you'd make
10 the deposit into, and then you'd load the mobile image.

11 Q. Have you -- as part of your role as a senior fraud
12 investigator, have you handled matters involving mobile
13 application?

14 A. Yes, I do.

15 Q. And have you become familiar with what information is
16 available from the mobile application?

17 A. Yes.

18 Q. When an individual logs into the mobile application, what
19 information is presented to them?

20 A. Their current balance information is available to them in
21 that mobile application.

22 Q. Do they see the balance of different accounts or just one
23 account?

24 A. If the profile is set up having multiple different accounts
25 in it, then you can see multiple different accounts and the

K1MVTEM4

Finocchiaro - direct

1 balance information.

2 Q. According to this table that we're looking at here, what's
3 the user ID for the person who deposited the checks?

4 A. It is Ari B. Teman.

5 Q. And is that shown in column C here?

6 A. Yes, it is.

7 MR. BHATIA: Mr. Magliocco, could you zoom in a little
8 bit on maybe rows 38 and 46.

9 Q. Okay. So that's shown in column C; is that right?

10 A. That is correct.

11 Q. And in column B, what's shown there?

12 A. In column B, it is the date and time.

13 Q. Okay. So what's the date and time of the two transactions
14 that are highlighted here?

15 A. 3/28 of 2019, the first one was at 17:08:37, and the second
16 one was at 17:12:08.

17 Q. And are you able to see here in column -- right after I,
18 what the amount of these deposits was?

19 A. The amount of the deposit is shown, so it's -- it says:
20 Action equal make deposit amount equals 18,000.

21 So they were both shown there.

22 Q. Is the amount 18,000, does that mean an \$18,000 deposit?

23 A. In this case there was two \$18,000 deposits, there's one
24 memo line for each.

25 Q. And are you able to see into what account these were

K1MVTEM4

Finocchiaro - direct

1 deposited?

2 A. Yes. So it shows it in -- it's so small.

3 Q. We'll take a look at another table.

4 A. So, yeah, it does show the account number in which the
5 funds are going into. So this is -- just to give indication,
6 this is all done in a code environment. So it's pulled -- so
7 the data is pulled from our sequel servers.

8 THE COURT: Can I ask the witness just to keep your
9 voice up so the ladies and gentlemen can hear you better, of
10 the jury? Thank you.

11 Q. Is there a table that would show you which IP address is
12 associated with these transactions?

13 A. Yes. And actually, the information is on this table. It's
14 located in the same string, so between the two highlighted
15 yellow versions. It's over -- it will say IP, and it's listed
16 as 74.203.64.198.

17 Q. Where is that on the screen?

18 A. So it is located in line 42, all the way to the right-hand
19 side. So it's right kind of where that pink blip is.

20 Q. Is there a tab that will show you what physical location is
21 associated with that IP address?

22 A. I'm sorry?

23 Q. Is there a table that would show you what physical location
24 is associated with that IP address?

25 A. Yes. That information is on the OLB detail tab, but it's

K1MVTEM4

Finocchiaro - direct

1 also listed on the device tab. So I think you're going to look
2 at the device tab.

3 MR. BHATIA: Mr. Magliocco, can we go to the device
4 tab.

5 Q. And why don't you draw our attention to the rows that
6 involve the transactions here.

7 A. So row 79, down to 83. So you'll see the IP address is
8 listed in column E, and it lists it as being in column P as
9 being --

10 THE COURT: May I just ask government counsel --

11 A. It's column P, and it's listed as New York, New York.

12 THE COURT: The type here is microscopic. The jury is
13 struggling to see it. If you intend to draw their attention to
14 lines here, you would do best to have the lines that you're
15 focusing on magnified just to facilitate the jury's review.

16 MR. BHATIA: Okay. Let's zoom in even further then.

17 A. So I draw our attention to column E which has the IP. And
18 then over -- column E, which has the IP location, and then the
19 physical location in column P.

20 Q. And is that physical location in column P based off of the
21 IP address?

22 A. Yes, it is.

23 Q. And what is it listed here as the location?

24 A. New York, New York.

25 Q. Okay. And I should ask this question: What is an IP

K1MVTEM4

Finocchiaro - direct

1 address?

2 A. It's an internet protocol address. So it gives a distinct
3 location in which an online banking login is being conducted.

4 Q. Have you become familiar with the process for how Bank of
5 America handles mobile deposits?

6 A. Yes.

7 Q. And the process through which a check is submitted through
8 a mobile deposit?

9 A. Yes.

10 Q. Describe that process.

11 A. So the process through the mobile deposit we went through.
12 Basically, you login through the online banking, you would
13 upload the image, and it would make the deposit into your
14 account, so versus going to a teller or an ATM, you can do that
15 through the mobile application.

16 Q. And there are, sort of, the electronic communications sent
17 from the bank when doing mobile deposit; is that right?

18 A. That is correct.

19 Q. And is there one state where electronic communications are
20 routed for a mobile deposit?

21 A. Can you restate?

22 Q. Is there a location through which electronic communications
23 are routed associated with mobile deposit?

24 A. The information flows through our servers which are located
25 in Texas.

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Finocchiaro - direct

1 Q. So if someone does a mobile deposit, there's some
2 communication sent to Texas?

3 A. That is correct.

4 Q. Okay. I'll direct your attention to the tab ending in 8085
5 of this document, and rows 50 and 53 in particular.

6 MR. BHATIA: And we can zoom way in.

7 Q. Okay. Ms. Finocchiaro, have you reviewed this record
8 before?

9 A. Yes, I have.

10 Q. And are these the two rows that correspond to the checks
11 that you testified about?

12 A. Yes, they are.

13 Q. Okay. And starting here in column D for both of these
14 checks, these are the highlighted rows, what's the account into
15 which these were deposited?

16 A. They were into the GateGuard, Inc. account.

17 Q. Okay. And are you able to see what the value of those
18 transactions was?

19 A. They were \$18,000 each.

20 Q. And what's shown in column G?

21 A. Column G is the ledger balance once the checks are
22 deposited into the account.

23 Q. So at the end of the day, after these checks were
24 deposited, there was 38,995.96 in that account; is that
25 correct?

K1MVTEM4

Finocchiaro - direct

1 A. Yes, that's correct.

2 Q. Okay. And does this table -- if we go up or down, are we
3 going to see what happened before or afterwards?

4 A. Yes. So the information is in a daytime descending order.
5 So the information below would be anything that happened prior,
6 and the information above would be anything that happened after
7 the deposit was completed.

8 Q. Okay. If we look at transactions going up this
9 spreadsheet, those happened after these checks?

10 A. That is correct.

11 Q. Okay. I'll direct your attention to row 48.

12 MR. BHATIA: Mr. Magliocco, if you could highlight row
13 48.

14 Q. What transaction do you see happening in that row?

15 A. On 3/29, there was an online banking transfer; and it was
16 transferring \$35,000 from the GateGuard, Inc. account to the
17 account that ends in 0351.

18 Q. So is that the day after these two deposits?

19 A. Yes, it is.

20 Q. Is that \$35,000 leaving the account?

21 A. Yes, it is.

22 Q. And it's going to another account?

23 A. It is going into the 0351.

24 Q. And based on your review of records, including Government
25 Exhibit 103 and 104, have you identified the account holder for

K1MVTEM4

Finocchiaro - direct

1 the account ending in 0351?

2 A. Yes, I have.

3 Q. Who is it?

4 A. That account is held in the name of Friend or Fraud, and
5 the sole signer was Mr. Ari B. Teman.

6 Q. Based on -- was there any other signer on that account?

7 A. No, there's not.

8 Q. I'll direct your attention to the next tab here ending in
9 0351. That's for the Friend or Fraud account. And directing
10 your attention now to row 74, if we can zoom in on that. 73
11 rather.

12 And does row 73 here, we'll zoom in, does that show
13 the money coming into that account?

14 A. Yes, it does. In column E it lists it as a deposit of
15 35,000, and it's coming from the 8085 account, which was
16 GateGuard.

17 Q. Okay. And is there another -- so I'll direct your
18 attention now to row 74. That's the one right below it. Are
19 you able to see there what transactions have been taking place
20 in row 74?

21 A. Yes. In row 74, there was a \$20,000 movement; it was a
22 withdrawal, and the funds were being placed into the account
23 that ends in 1046.

24 Q. So you were able to see \$35,000 coming into this account,
25 and then \$20,000 going to a third account?

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1 A. That is correct.

2 Q. And were you able to identify, based on Government Exhibit
3 105, who is the account holder for the account ending in 1046?

4 A. Yes, account 1046 --

5 Q. You can take a look. It's Government Exhibit 105.

6 A. That would be the account in the name of Touchless Labs
7 LLC.

8 Q. And have you reviewed records showing who the signatory is
9 for that account?

10 A. Yes.

11 Q. And is that in the same record that you're looking at now?

12 A. Yes, it is.

13 Q. Who's the authorized signer for that account?

14 A. That's Ari B. Teman as well.

15 Q. And is he the only authorized signer?

16 A. Yes, he is.

17 Q. So is he the only authorized signer for all three accounts
18 we talked about?

19 A. Yes, he is.

20 Q. Okay. Now we'll go to a third spreadsheet.

21 I'll direct your attention to the tab ending in 1046
22 at the bottom here and, in particular, row 32.

23 Does row 32 reflect money coming into that account?

24 A. Yes, it does. It shows the deposit located in column E,
25 \$20,000 on 3/29; and it was coming from the account 0351.

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Finocchiaro - direct

1 Q. Okay. Now, going back to the first spreadsheet we looked
2 at, 8085, I'll direct your attention back to row 48. We looked
3 at this one before. That shows the -- does that show the
4 \$35,000 leaving that account?

5 A. Yes, it does.

6 Q. The day after the deposits?

7 A. Yes.

8 Q. And how much money is left in that account at the end of
9 the day after that transfer?

10 A. 4,000 -- or at the end of the day it would be \$3,995.96.

11 Q. I'd like to change topics for a moment and ask you
12 something about a chargeback. Are you familiar with the term
13 "chargeback"?

14 A. Yes.

15 Q. What is a chargeback?

16 A. A chargeback is essentially when a check is returning, so
17 it's when the check is presented to the financial institution.
18 However, the maker bank has established that for some reason
19 the check is no good, so it could be -- whether it would be
20 nonsufficient funds, altered or fictitious, or a counterfeit
21 check.

22 Q. Is a chargeback one way to unwind a transaction?

23 A. Correct.

24 Q. What are some examples of things that could trigger
25 chargebacks?

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1 A. Counterfeits, checks that are -- have been -- had a stop
2 payment that was placed on those, or checks that have been
3 deemed by the customer to not be legitimate checks.

4 Q. And how does Bank of America decide whether to honor a
5 chargeback request from another bank?

6 A. Banks honor each other's chargebacks. So if we receive a
7 chargeback, it is honored based on the fact that the maker
8 financial institution is indicating that the check for any
9 reason is not good.

10 Q. So if there's a chargeback in an account, where does the
11 money come from to fund the money going back?

12 A. If there's -- if the funds have been removed from the
13 account and we don't have a right to offset, the bank would be
14 standing at that time at a loss and there would be a negative
15 balance.

16 Q. That's in an instance where there isn't enough money in the
17 account to fund the chargeback. But if there is enough money
18 in the account, what happens?

19 A. If there's enough money in the account, then the funds
20 would just be deducted from the available balance.

21 Q. So in the instance where there's -- there are \$100 in the
22 account, and there's a \$50 chargeback, what happens?

23 A. It would leave \$50 in the account and it would recourse
24 that 50.

25 Q. What happens if there's only \$10 in that account and

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Finocchiaro - direct

1 there's a \$50 chargeback?

2 A. It's going to leave the account in a deficit of \$40.

3 THE COURT: Sorry, a little louder please.

4 A. It's going to leave the account in a deficit of \$40.

5 Q. And who would be responsible for those \$40?

6 A. So it's the responsibility of the customer to make good on
7 the balance in the account; so if the account's in a negative,
8 that it is brought to a positive balance.

9 Q. Would the bank pay that \$40 first?

10 A. It does. It does honor the chargeback, and it recourses
11 the money back to the maker bank.

12 Q. And then what are the bank's options to try to get those
13 \$40 back?

14 A. We do -- we look for the right to offset between accounts,
15 which means that we have the right to recover money that would
16 have been transferred from one account to another. And then
17 after we've completed the process of the investigation, it
18 would go to collections at that time. The only time that we
19 don't file for collections is when the account is being worked
20 actively by law enforcement in regards to a criminal
21 investigation.

22 MR. BHATIA: Mr. Magliocco, if we could scroll up this
23 page just a bit to row 30.

24 Q. What's the date of the transaction in row 30?

25 A. It's on 4/2 of 2019.

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1 Q. Is that a couple of days after the other -- the deposits we
2 talked about?

3 A. Yes, it is.

4 Q. And what transactions are you seeing happen in row 30?

5 A. In row 30, this is 36,000, and it was for the returned item
6 chargeback. Basically, it lumped the two together. So when
7 they came through on the same day, instead of doing two \$18,000
8 chargebacks, it does put those together and recourses the
9 account for a lump sum of 36,000.

10 Q. How much money was in this account on the day before the
11 chargeback?

12 A. On the day before the chargeback, there was \$4,695.30.

13 Q. And after the chargeback, how much was left in the account?

14 A. The account was sitting at a negative balance of
15 \$29,036.56.

16 Q. And so how did Bank of America come up with the funds to
17 pay the \$36,000 chargeback if there was only \$4,695.30 before?

18 A. Bank of America has the responsibility to make -- to
19 provide the funds back to the maker bank. So we're sitting at
20 a loss at that time.

21 Q. So Bank of America had to pay those extra funds?

22 A. Correct.

23 Q. Okay. Ms. Finocchiaro, I'd like to direct your attention
24 now to some activity in April 2019.

25 MR. BHATIA: Mr. Magliocco --

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1 Q. Actually, Ms. Finocchiaro, I'm going to show you Government
2 Exhibits 110 through 112. They should be in a binder in front
3 of you. Do you recognize those documents?

4 A. Yes, I do.

5 Q. As a general matter, what are they?

6 A. These are still frame images from our video surveillance
7 system.

8 Q. And how do you recognize those documents in particular?

9 A. I created the document.

10 Q. Are you familiar with how electronic surveillance records
11 are created at Bank of America?

12 A. Yes.

13 Q. And how are you familiar with that?

14 A. I use our video retrieval system. So there are -- it's an
15 active running system. It captures all of our images at all of
16 our ATMs, including our banking centers and our ATMs.

17 Q. If you want to find the photograph or a video associated
18 with a given transaction, what do you do?

19 A. I would pull the specific account for the date, time, and
20 location. I would enter the video retrieval system, and I
21 would choose the specific location and the specific machine or
22 teller that the transaction would have occurred.

23 Q. Does the bank collect photographs or surveillance of many
24 transactions or does it pick transactions in particular?

25 A. No. So it's a live-stream feed. And we're able to go back

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1 in from a 120-day period and review all transactions second by
2 second, minute by minute, and for specific locations.

3 Q. Are you a custodian of records for Bank of America?

4 A. Yes, I am.

5 Q. When these records, that is, Government Exhibits 110, 111,
6 and 112 -- were these records created and maintained by Bank of
7 America in the ordinary course of business?

8 A. Yes, they were.

9 Q. Were they made at or near the time of the acts described in
10 them by someone with knowledge of them?

11 A. Yes, they were.

12 MR. BHATIA: Your Honor, the government offers
13 Government Exhibits 110, 111, and 112.

14 THE COURT: Is there an objection?

15 MR. GELFAND: No, your Honor.

16 THE COURT: All right.

17 They are all received, 110, 111, and 112.

18 (Government's Exhibits 110, 111, 112 received in
19 evidence)

20 MR. BHATIA: Mr. Magliocco, could you please publish
21 Government Exhibit 111 in evidence.

22 Q. Ms. Finocchiaro, what does the first page of this document
23 show?

24 A. This is a transaction that was being completed at our
25 Lincoln Road Financial Center. It was on 4/19 of 2019 at 18:00

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1 hours. And it was listed as our LT1, so it was a transaction
2 that was being conducted with our Teller No. 1.

3 Q. Quickly flipping to page 2, what does page 2 show?

4 A. It's a transaction in the same sequence. It's on 4/19 of
5 2019 at 18:05. And again, it was at our Lincoln Road Financial
6 Center.

7 Q. That's about five minutes later?

8 A. That is correct.

9 Q. And what about page 3?

10 A. It was on 4/19/2019 at 18:05, so it was just a different
11 angle and the same minute.

12 Q. Have you reviewed account records and identified
13 transactions happening around the same time these photographs
14 were taken?

15 A. Yes, I did.

16 MR. BHATIA: Mr. Magliocco, could you please publish
17 Government Exhibit 205 in evidence.

18 Q. What does this document show?

19 A. So this is a check that was being deposited. It was -- the
20 maker bank was JPMorgan Chase. And it was from account ABJ
21 Lenox LLC. The account number on the bottom right-hand corner
22 is 833579100.

23 Q. And have you reviewed bank records showing whether this was
24 taken around the same time as those photographs?

25 A. Yes, it was.

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Finocchiaro - direct

1 Q. Into what account -- what account is this check addressed
2 to?

3 A. GateGuard, Inc.

4 Q. Is that the same one we talked about before?

5 A. Yes, it is.

6 Q. Who is the check written from -- or who is the account
7 holder that it's drawn from?

8 A. ABJ Lenox LLC.

9 Q. And what's the bank where these funds would come from?

10 A. JPMorgan Chase.

11 Q. That's listed up there in the top middle of the check?

12 A. That is correct.

13 Q. Okay. And in the memo line, what do you see there?

14 A. In the memo line it lists device removal, 539 Lenox Avenue
15 (gate).

16 Q. And in the signature line, do you see a physical signature?

17 A. There is not.

18 Q. What do you see instead?

19 A. There is a notation that indicates: Draw per contract. No
20 signature required. Note to bank, this is a valid check. You
21 are required by law -- contract at -- oh, contact at GateGuard
22 XYZ, legal terms, PHP accepted by above client. Contact us
23 212-203-3714 with questions.

24 Q. And you can take a look at the hard copy in front of you.
25 How many checks do you see in Government Exhibit 205?

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1 A. Eighteen.

2 Q. Okay. And are all 18 of those checks addressed to
3 GateGuard, Inc.?

4 A. All 18 are addressed to GateGuard, Inc., yes.

5 Q. And are they all written from ABJ Lenox?

6 A. Yes, they are.

7 Q. Let's look at another example check.

8 MR. BHATIA: Can we turn to the second page of this
9 document.

10 Q. Okay. Is this another check from ABJ Lenox LLC?

11 A. Yes, it is.

12 (Continued on next page)

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1 Q. And is this one also for \$18,000?

2 A. It is for 18,000.

3 Q. And what is listed in the memo line here?

4 A. Device removal fee, 102 West 138th Street, gate.

5 Q. Let's look at another example.

6 Mr. Magliocco, could we go to page 7 of this document.

7 In this check, what is listed in the memo line?

8 A. Attorney use fee, 539 Lenox Avenue, Gate.

9 Q. What is listed as the value of this check?

10 A. \$5,000.

11 Q. OK. That's different than the two we looked at a moment
12 ago?

13 A. That is correct.

14 Q. And, Mr. Magliocco, could we go to page 13 for another
15 example.

16 What's listed here in the memo line of this check?

17 A. Collection fee, 539 Lenox Avenue, Gate.

18 Q. And what about the value of this check?

19 A. It was for \$10,000.

20 Q. OK. This one is also from the ABJ Lenox account to the
21 GateGuard Inc. account?

22 A. That is correct.

23 MR. BHATIA: Mr. Magliocco, could you please publish
24 Government Exhibit 204.

25 Q. Ms. Finocchiaro, are you able to identify which account

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Finocchiaro - direct

1 these checks were drawn from?

2 A. It's ABJ Milano LLC.

3 Q. Is that true for all the checks in this exhibit?

4 A. Yes, it is.

5 Q. Now, are these all addressed to the GateGuard Inc. account?

6 A. Yes, they are.

7 Q. How does the signature area compare to the previous check?

8 A. It is the same. It lists, "Draw per contract, no signature
9 required."

10 Q. Ms. Finocchiaro, were these checks deposited at the same
11 time as the 18 that we just talked about?

12 A. Yes, they were.

13 Q. And at the same branch?

14 A. Yes, they were.

15 Q. OK. Who is the -- which bank is sending the money for
16 these checks?

17 A. These checks in this series are JPMorgan Chase.

18 Q. How many checks are in this exhibit?

19 A. Six.

20 Q. And are these all made out from an ABJ Milano account at
21 the top?

22 A. Yes, they are. Yes.

23 Q. OK. And last set of checks for now. I will direct your
24 attention to Government Exhibit 203. I'll direct your
25 attention to the check image at the top here.

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1 How many checks are in this set of government exhibit?

2 A. There are three.

3 Q. Are they all made out from 518 West 205 LLC at the top?

4 A. Yes, they are.

5 Q. And are they all made out to the GateGuard Inc. account?

6 A. Yes, they are.

7 Q. And these were deposited at the same time as the last two
8 sets of checks we talked about?

9 A. Yes, they are.

10 Q. OK. When checks are deposited at a Bank of America branch,
11 what steps are taken to digitize the image of the check?

12 A. The checks are scanned into our system and added to our
13 image view system and housed, so anytime we need to view the
14 images, that we can view the images of all deposits.

15 Q. Are these scanned at the bank where they are first
16 deposited?

17 A. Yes, they are.

18 Q. And what happens with that picture from there?

19 A. There are sent into the video imaging system. It is a
20 record of the account, and at any time, like I said, if we need
21 to be able to see that image, we can view that image.

22 Q. Are the checks also transmitted to the Federal Reserve or
23 through the interbank clearing process?

24 A. Yes. So in this case these are drawn on signature banks,
25 so they would have gone through the Federal Reserve. The

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1 JPMorganChase go through an interbank clearing system.

2 Q. The check image in addition to sort of the information from
3 the transaction?

4 A. Correct.

5 Q. OK. I will now direct your attention back to the
6 spreadsheet that we were looking at earlier. That is
7 Government Exhibit 113, and the tab underneath 805.

8 So the tab underneath 805, that is the GateGuard Inc.
9 account?

10 A. 8085 is GateGuard Inc. yes.

11 Q. Thank you, 8085.

12 And this is the same account that was left with a
13 negative balance on April 2, 2019?

14 A. That is correct.

15 Q. OK. Now, if we can scroll up to row 16, Mr. Magliocco.

16 I'm sorry. That's right.

17 What do you see in row 16? What transaction is taking
18 place in row 16?

19 A. So in the 8085 GateGuard account, there was a deposit that
20 was completed for \$297,000. And it is a counter credit, which
21 means that it was a transaction that was done at a financial
22 center with a teller.

23 Q. And is this transaction listed in row 16, did that
24 transaction happen around the same time as this photograph was
25 taken?

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1 A. Yes, it was.

2 Q. And is the \$297,000 the total value of the checks that you
3 testified about?

4 A. Yes.

5 Q. The three?

6 A. The 203, 204 and 205 exhibits.

7 Q. And at the end of the day, after that transaction, what is
8 the value of the account?

9 A. Once the checks were deposited, the ending balance was
10 \$271,803.12.

11 Q. And what is the date of the deposit there?

12 A. It was on 4/19/2019.

13 Q. Based on your review of Government Exhibits 203, 204 and
14 205, is the date on the check the same as the date of the
15 deposit?

16 A. Yes, it is.

17 Q. OK.

18 Let's take a look at row 13, which is just three rows
19 up from where we were looking. So that means it happens later,
20 right?

21 A. That is correct.

22 Q. OK. And what is the date of the transaction in row 13?

23 A. In row 13, it is a withdrawal and it was on 4/24. It is
24 indicating a return item chargeback is completed.

25 Q. What does a return item chargeback mean?

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1 A. It means that a few of the checks from that bulk deposit of
2 the \$297,000 was returned, that they were indicating
3 counterfeit.

4 Q. Is there a record that would show you which of those checks
5 from that 27-check deposit were the subject of a chargeback
6 here?

7 A. On this tab, no.

8 Q. Would that be in Government Exhibit 114 or somewhere else?

9 A. It would be, yes.

10 MR. BHATIA: Mr. Magliocco, could we go to Government
11 Exhibit 114 for a moment.

12 I will direct your attention to the third page at the
13 bottom.

14 Can you zoom in on the last two rows there. I'm
15 sorry. It is the three rows above that.

16 Q. So looking at I think the bottom three rows that are zoomed
17 in here, what is the date of these transactions?

18 A. The date of the transactions were, again, 4/19 of 2019.

19 Q. And what is shown in this record?

20 A. So this record from left to right, it is the date of the
21 returned item chargeback, so it is the date that Bank of
22 America is notified that the checks are returning for
23 counterfeit. It tells us the dollar amount per item, and it
24 tells us the reason that those checks are returning.

25 Q. What is the listed reason here?

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1 A. It is counterfeit check.

2 Q. Is that a description that you get from another bank, or is
3 that something that Bank of America would apply?

4 A. No, that is something that -- they have to apply a return
5 reason code when they are sending us the chargeback.

6 Q. Is the chargeback in this instance requested by Bank of
7 America or does the other -- does the other bank say I would
8 like to undo this transaction?

9 A. It is the other bank indicating that their customer has
10 indicated that the transaction is not a legitimate transaction,
11 so it is them requesting.

12 Q. The chargebacks that are shown here were initiated outside
13 of Bank of America?

14 A. That is correct.

15 Q. Is that true of all the transaction in this document?

16 A. That is correct.

17 Q. OK.

18 MR. BHATIA: Mr. Magliocco, I would like to -- if you
19 could please go back to Government Exhibit 113. That is the
20 spreadsheet.

21 Q. So row 13 here shows the \$33,000 chargeback, is that right?

22 A. That is correct.

23 Q. And then if you go up to row 12, what transaction do you
24 see there?

25 A. On row 12 it is indicating that from the GateGuard Inc.

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Finocchiaro - direct

1 account, it is withdrawing \$225,000 on 4/26 of 2019. It is an
2 online banking transfer that's being completed to the account
3 that is checking account 0351.

4 Q. So it shows \$225,000 being sent to the account ending in
5 0351?

6 A. That is correct.

7 Q. Is that the Friend or Fraud account that you testified
8 about previously?

9 A. Yes, it is.

10 Q. Who is the author or signer for that account?

11 A. It is Ari B. Teman.

12 Q. Ms. Finocchiaro, one row above it, so row 11, what
13 transaction do you see take place in that row?

14 A. That is an online banking transfer that's being completed
15 out of GateGuard into -- from online banking into checking
16 account 5580.

17 Q. And based on your review of Government Exhibit 107, do you
18 know who the account holder is for the account ending in 5580?

19 A. That is the account for -- it is a personal account for Ari
20 B. Teman.

21 Q. Is there an authorized signer for that account?

22 A. He is the sole signer for this account.

23 Q. That one is a personal account instead of a business
24 account, is that right?

25 A. That is correct.

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Finocchiaro - direct

1 Q. So on the day before these two transfers, what is the total
2 value of the account?

3 A. On the day prior to that transfer, it was 200 and --
4 \$10,167.12.

5 Q. After those transactions, it is \$10,167.12, right?

6 A. That is -- no. I'm sorry, on the day after. So it would
7 be on 4/29, and it would be a ledger balance of 4,624.51.

8 Q. OK. So with those two transactions, it goes from
9 approximately \$238,000 to \$10,000, is that right?

10 A. It goes down to -- it goes, yes, correct.

11 MR. BHATIA: OK. Mr. Magliocco, I would like to
12 direct your attention to the tab ending in 0351, which is the
13 tab associated with the Friend or Fraud account. And row 36,
14 scroll up to it.

15 Q. What transaction do you see happening in row 36, Ms.
16 Finocchiaro?

17 A. That is the \$225,000 being transferred from account 8085 in
18 the name of GateGuard.

19 Q. That is the money going from the GateGuard account to the
20 Friend or Fraud account?

21 A. That is correct.

22 Q. I would like to direct your attention now to row 34 -- let
23 me step back.

24 What is the date of the transaction you just testified
25 about in row 36?

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Finocchiaro - direct

1 A. 4/26 of 2019.

2 Q. Now looking at row 34, what is the date of that
3 transaction?

4 A. 4/26/2019.

5 Q. And what transaction is happening there?

6 A. It is a \$4,500 cash withdrawal that's being completed from
7 the online banking transferring the funds from GateGuard -- I'm
8 sorry, from Friend or Fraud over to account 5580.

9 Q. And based on your review of Government Exhibit 107, who is
10 the account holder for that account?

11 A. For 5580, it is Ari Teman. Actually, 5580 is Touchless --

12 (Pause)

13 5580 is Ari B. Teman.

14 Q. And isn't there another transaction on the same day,
15 according to this spreadsheet?

16 A. On 4/26 --

17 Q. That is right.

18 A. -- there is a transaction via online banking. It's a
19 withdrawal transferring 180,000 to account -- checking account
20 1046.

21 Q. OK. And do you see another transaction from that account
22 in row 29?

23 A. There was -- on 4/29, there was a transaction which was a
24 deposit of \$125,400, and it was an online banking transfer from
25 checking account 1046.

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1 Q. So are you seeing the money going into the account 1046 and
2 then coming back three days later?

3 A. That is correct.

4 Q. OK. I'll direct your attention to row 32 here.

5 Are you seeing -- there a wire transaction in that
6 row?

7 A. Yes, there is. It is an international wire that's
8 conducted on 4/29.

9 Q. And are you able -- is there any more information you can
10 get about where it is being sent to -- the beneficiary, I
11 should say?

12 A. Yes. It was -- I can't pronounce it, but Zuhuhai Taichuan
13 Cloud Tech ID -- Tech and then there is an ID number.

14 Q. In row 24 -- scroll up just a bit -- is there another wire
15 transaction there?

16 A. There is another wire transaction. It is being conducted
17 on 5/1, and it is going to beneficiary of ZBT International
18 Limited.

19 Q. And now I will direct your attention to row 10.

20 This is all under the Friend or Fraud account, is that
21 right?

22 A. I do believe so. If you can scroll over --

23 THE COURT: A little louder, please.

24 A. It is in the Friend or Fraud Inc. account, yes.

25 Q. This is the account where money was transferred from the

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Finocchiaro - direct

1 GateGuard account to this account?

2 A. That is correct.

3 Q. OK. So in row 10, what transaction do you see here taking
4 place?

5 A. That is on 5/8, there was a \$4,000 withdrawal, and it is a
6 customer withdrawal image. So it was a transaction that was
7 taking \$4,000 out of a physical teller.

8 Q. Ms. Finocchiaro, I would like to direct your attention to
9 Government Exhibit 112. in evidence.

10 What's the date listed here on this document?

11 A. 5/8 of 2019.

12 Q. What is this?

13 A. This is showing a cash withdrawal transaction at our 1 Penn
14 Plaza location on 5/8 at 15:04.

15 Q. Based on your review of this record and the account record,
16 what is the connection between the \$4,000 transaction and this
17 photograph?

18 A. This is the photograph of Mr. Teman completing the
19 transaction for the cash withdrawal.

20 Q. All right. Let's switch topic now. We'll talk about
21 chargebacks again.

22 Based on your review of the Bank of America records,
23 was there a chargeback of some of the funds deposited into the
24 GateGuard account in April 2019?

25 A. Yes, there was.

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1 Q. OK. Let's take a look again at Government Exhibit 114, and
2 I will direct your attention to the first page.

3 If we can zoom in on just the first row.

4 Ms. Finocchiaro, what is listed here as the -- what is
5 the description listed here for why this chargeback took place?

6 A. RCC breach of warranty. So that is a remotely created
7 check breach of warranty.

8 MR. BHATIA: One moment.

9 (Pause)

10 Your Honor, this might be an appropriate time for the
11 instruction regarding relief credit checks.

12 MR. GELFAND: I would join in that request.

13 THE COURT: Counsel, has the expression been used yet
14 in the receipt of evidence?

15 MR. BHATIA: The witness just used it.

16 THE COURT: All right. Very good.

17 Ladies and gentlemen, you have just heard reference to
18 something called a remotely created check, also known for short
19 as an "RCC." A remotely created check is a check that is not
20 created by the paying bank and that does not bear a signature
21 applied or purported to be applied by the person on whose
22 account the check is drawn. I instruct you that the banking
23 laws of this country do permit the use of remotely created
24 checks under certain circumstances, provided, of course, that
25 the customer on whose account the check is drawn has authorized

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1 the check. However, this case does not involve whether or not
2 the checks in question here meet the technical definition of a
3 remotely created check, and you should not concern yourself
4 with that. The question for you will be whether the government
5 has proven beyond a reasonable doubt the elements of the
6 offenses charged, which, again, are bank fraud and wire fraud.

7 I will instruct you on the elements of those offenses
8 later in the trial after all of the evidence has been received.

9 And that ends the instruction. Go ahead.

10 Thank you, counsel.

11 BY MR. BHATIA:

12 Q. As you understand it, what does "RCC warranty breach" mean
13 as a reason for a chargeback?

14 A. It means that the maker has disputed at this point that
15 there is a breach of warranty, so there is an agreement and
16 that the agreement has failed.

17 Q. And based on your review of these records, was all of the
18 \$297,000 deposited from the 27 checks subject to a chargeback?

19 A. They were all subject to a chargeback, correct.

20 MR. BHATIA: Mr. Magliocco, could we go back to
21 Government Exhibit 113.

22 If you could go to row 3. I'm sorry, in the tab
23 ending in 8085.

24 Q. Ms. Finocchiaro, what is happening in row 3?

25 A. On 5/7, we received a return item chargeback for a total

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1 aggregate amount of \$264,000.

2 Q. And is that another chargeback?

3 A. It is. It is a chargeback for all of the items totaling
4 264,000.

5 Q. So between this \$264,000 chargeback and the one in row 13,
6 are those all -- does that cover all the 27 checks?

7 A. Yes, it does.

8 Q. OK. And we don't need to switch tabs, but we saw a few
9 photographs from the \$4,000 transaction, is that right?

10 A. Yes.

11 Q. The \$4,000 was withdrawn from the teller?

12 A. Yes, it was.

13 Q. Was that transaction done at a bank here in Manhattan?

14 A. Yes, it was.

15 Q. OK. After this chargeback for \$264,000, the one here, so
16 after all the chargebacks for all the checks, what is the value
17 of the account?

18 A. We are sitting at a negative amount of \$260,319.81.

19 Q. How is Bank of America able to return \$264,000 if there was
20 only about \$4,000 in the account?

21 A. We are currently sitting on a total loss amount in regards
22 to that.

23 Q. Bank of America had to pay the money out?

24 A. That is correct.

25 Q. It had to cover it?

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1 A. That is correct.

2 Q. We mentioned earlier that chargeback requests can come from
3 another bank, right?

4 A. Correct.

5 Q. So the other bank is saying we need to get the money back.

6 What happens if Bank of America's customer says this
7 transaction is authorized but the other bank says it is not
8 authorized, what does Bank of America do?

9 A. So we look at the information. However, it was indicated
10 that it was looked at as a dispute between the customer, the
11 maker and the depositor, and at that point it is not -- it's
12 not within our decision to rectify that matter.

13 Q. In that scenario where the other bank says it is not
14 authorized, Bank of America's customer says it is, does the
15 transaction go through or does it not go through?

16 A. So the chargeback does remain on the account. We do remain
17 in the negative. It is the customer's responsibility to make
18 the balance whole.

19 Q. So the practice of Bank of America is to honor the
20 chargeback?

21 A. That is correct.

22 Q. Did there come a time when the GateGuard account was
23 closed?

24 A. Yes, there was.

25 Q. And what was the value remaining in the account when it was

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1 closed?

2 A. In the GateGuard account, the total negative balance was
3 \$260,319.81.

4 Q. And you testified about two other accounts, the Friend or
5 Fraud account and the Touchless Labs account?

6 A. Correct.

7 Q. Were those accounts closed as well?

8 A. Yes, they were.

9 Q. And was there a positive balance or a negative balance in
10 those accounts?

11 A. Can we look at the --

12 Q. Let's take a look at those tabs. I will direct your
13 attention to the tab ending in 0351. That is for the Friend or
14 Fraud account that you testified about?

15 A. Correct. So at that time when the account was closed, it
16 was at a positive balance of \$8,386.

17 Q. And what about the account ending in 1046? That is the
18 Touchless Labs account.

19 A. We were sitting at a positive balance of \$86,558.18.

20 Q. What did Bank of America do with the money in those
21 accounts?

22 A. So those fund were immediately sent to hold harmless in
23 regard -- it is a holding -- it is a holding account that the
24 bank has. We review the account for offset to see if we're
25 able to utilize the funds from the transfer to offset the loss

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1 that was incurred based on the returned item chargeback.

2 Q. Before that, did there come a time when the bank, or Bank
3 of America, tried to return the deposited balance funds in
4 those accounts?

5 A. Yes.

6 Q. What happened?

7 A. So the funds were -- the checks were cut for the individual
8 accounts and the physical check was mailed.

9 Q. Let's unpack that. So in this account, for example, there
10 is \$86,558.18 at the time of closing, is that right?

11 A. That is correct.

12 Q. Approximately?

13 What did Bank of America do with that \$86,000?

14 A. The funds were placed into an official item and they were
15 mailed to the customer.

16 Q. A check was mailed to the customer?

17 A. Correct.

18 Q. Is the same true of the other account?

19 A. That is correct.

20 Q. OK. What happened with those checks?

21 A. The checks were returned in the mail for the address.

22 Q. You mentioned something about -- you mentioned something
23 called an offset. I want to unpack that a little bit.

24 If there is a negative account -- if there is a
25 negative balance when a chargeback happens, does Bank of

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1 America try to take some steps to get some of that money so it
2 can pay for the chargeback?

3 A. We do. So we look at the events that occurred, so the
4 transactions that were incoming, what was the trail of events
5 after that, so we look to see where the funds were transferred
6 to to see if we can offset to bring those funds back to cover
7 the loss that's being sustained.

8 Q. If an individual had three accounts at the bank, for
9 example, and there was a chargeback from one, could the bank
10 try to use the funds in the other account to pay for it?

11 A. So we do not have the right to offset when the tax
12 identification number is different from one entity to the
13 other.

14 Q. So if it was an individual -- three personal accounts,
15 would the bank typically be able to draw funds from the other
16 accounts?

17 A. Yes.

18 Q. If it was for three different businesses, for three
19 different tax numbers, would the bank typically be able to use
20 the funds?

21 A. We cannot offset our loss when it is a different tax
22 identification number.

23 Q. And based on your review of the records admitted into
24 evidence earlier today, do you know if the three accounts that
25 you talked about had different tax ID numbers?

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Finocchiaro - cross

1 A. They did.

2 Q. So as a general matter, is the bank able to recover funds
3 from those three accounts?

4 A. We were not.

5 MR. BHATIA: Nothing further, your Honor.

6 THE COURT: All right. Thank you.

7 Cross-examination, Mr. Gelfand.

8 MR. GELFAND: Thank you, your Honor.

9 THE COURT: Yes. You may inquire.

10 CROSS-EXAMINATION

11 BY MR. GELFAND:

12 Q. Good afternoon, Ms. Finocchiaro.

13 A. Good afternoon.

14 Q. Did I pronounce that right?

15 A. Yes.

16 Q. Ms. Finocchiaro, you and I have never met, correct?

17 A. That is correct.

18 Q. You and I have never spoken, correct?

19 A. That is correct.

20 Q. You did, on the other hand, meet several times with the
21 prosecutors to prepare for your testimony, correct?

22 A. I did.

23 Q. And you spoke with them several times by phone, correct?

24 A. I did.

25 Q. OK. Now, you testified that you are the senior fraud

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Finocchiaro - cross

1 investigator, or a senior fraud investigator at Bank of

2 America, correct?

3 A. Yes.

4 Q. And you have been there for quite some time, correct?

5 A. Yes.

6 Q. You testified that in your job, you've conducted thousands

7 of investigations; those were your words, correct?

8 A. Correct.

9 Q. OK. Could I ask you to speak up a little bit?

10 A. Yes, that is correct.

11 Q. Now, obviously, you're not law enforcement. When you say

12 "investigations," you mean investigations on behalf of the

13 bank, correct?

14 A. That is correct.

15 Q. And your job is to protect, if possible, the bank's

16 interests, correct?

17 A. Correct.

18 Q. OK. And would you agree with me that when conducting any

19 sort of investigation, it is important to obtain all relevant

20 information, to the extent possible?

21 A. Yes, that is correct.

22 Q. And so, in other words, just to speak simply, if there are

23 two sides to a story, it is important to actually get both of

24 those sides, correct?

25 A. Correct.

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Finocchiaro - cross

1 Q. OK. The contracts that are referenced on the checks that
2 you've testified about, you testified that there is a URL,
3 correct?

4 A. That is correct.

5 Q. And just to be clear, what is a "URL"?

6 A. It's a hyperlink that would take you to -- you can take
7 that link and Google that and you can identify the subject of
8 that link.

9 Q. So it is very simple to access that website; you just take
10 it into a Web browser, correct?

11 A. That is correct.

12 Q. Did you do that over the course of your investigation?

13 A. Early on in the investigation, I do believe that I did,
14 yes.

15 Q. And that took you to GateGuard's website and terms and
16 conditions and payment terms, correct?

17 A. So the bank actually blocks the links, so I was not able to
18 view that, but I would have attempted to do that.

19 Q. When you say the bank blocks the links, meaning your
20 computer security?

21 A. Computer security or IT department does not allow certain
22 links to be processed.

23 Q. OK. Did you take an iPhone, for example and, just look up
24 the website?

25 A. I did not.

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Finocchiaro - cross

1 Q. So to this day, have you actually read the GateGuard
2 contract?

3 A. I did not.

4 Q. Now, you testified about a number of what the government
5 called checks, basically these 29, quote-unquote, checks or
6 RCCs, correct?

7 A. Correct.

8 Q. OK. Now, in total there were initially, as you testified,
9 two mobile deposits into the GateGuard account in March,
10 March 28th of 2019, correct?

11 A. That is correct.

12 Q. And two mobile -- I'm sorry, and 27 checks deposited
13 physically at a bank branch in Miami, Florida?

14 A. That is correct.

15 Q. And that was in April, essentially three weeks later,
16 April 2019, correct?

17 A. Correct.

18 Q. OK. And we looked at a number of those checks. I'm not
19 going to show you all of them but I want to ask you a couple of
20 questions about them.

21 MR. GELFAND: If I can turn on the Elmo, please?

22 Your Honor, I'm showing the witness Government's
23 Exhibit 201, which was previously admitted.

24 THE COURT: Very good.

25 BY MR. GELFAND:

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Finocchiaro - cross

1 Q. Now, can you, just to refresh our memory, you've testified
2 to Government's Exhibit 201. It was one of the first documents
3 that the prosecutor showed you, correct?

4 A. That is correct.

5 Q. OK. This was one of the March 28, 2019 mobile deposits,
6 correct?

7 A. That is correct.

8 Q. OK. And you would agree with me, would you not, that this
9 expressly includes the phrase, "Draw per contract, no signature
10 required," correct?

11 A. Correct.

12 Q. OK. And you testified that there is essentially, I'll use
13 your phrase, a squiggly line, correct?

14 A. Correct.

15 Q. In fact, that is the same squiggly line, if you will, as on
16 the endorsement section of the check, correct?

17 A. That is correct.

18 Q. Now, when you sign an endorsement of a check, we all have
19 this life experience, you are signing that you are the one
20 depositing the check, correct?

21 A. Correct.

22 Q. So it is pretty clear that if in fact Ari Teman was the one
23 depositing this check and then signing on the back, that,
24 quote-unquote, signature squiggly line represented is Ari
25 Teman's signature, correct?

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Finocchiaro - cross

1 A. Yes.

2 Q. OK. Just to be clear, when we look at, for example, the
3 only other one introduced into evidence deposited that day --
4 for the record, this is Government Exhibit 202 -- do you see
5 that in front of you?

6 A. Yes, I do.

7 Q. OK. And that, too, includes the same squiggly line in both
8 sections of the check, correct?

9 A. There is a squiggly line for the signature on the top. It
10 looks like a straight line across the bottom underlining
11 "Deposit only."

12 Q. OK. Can we agree that all four of these squiggly lines
13 look awfully similar?

14 A. They do look awfully similar.

15 Q. OK. Both of these include, "Draw per contract, no
16 signature required," correct?

17 A. Correct.

18 Q. And, in fact, you testified that these two -- I am going to
19 loosely use the word checks -- these two documents were
20 deposited into the Bank of America account for GateGuard Inc.,
21 correct?

22 A. Correct.

23 Q. OK. And GateGuard had been a longtime customer of Bank of
24 America as of March of 2019, the day that they were deposited,
25 correct?

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Finocchiaro - cross

1 A. Correct.

2 Q. OK. And you've reviewed in preparing for your testimony
3 today and in investigating this case for the bank, you've
4 reviewed extensive bank records, it sounds like, correct?

5 A. Correct.

6 Q. So is it fair to say that you are at least probably more
7 familiar than the average person with GateGuard's banking
8 activity at Bank of America?

9 A. Yes.

10 Q. OK. And in fact, GateGuard opened its account -- I'm
11 talking about GateGuard specifically -- in 2016 with Bank of
12 America, correct?

13 A. I would have to refresh but I do believe that is correct.

14 Q. OK. And when a customer opens an account with a bank, the
15 customer fills out some paperwork with the bank, correct?

16 A. That is correct.

17 Q. OK. And what's the purpose, just generally speaking, of
18 the paperwork that the customer fills out?

19 A. There is a signature card that's required, so it houses the
20 customer's signature. It's the deposit agreement, and the
21 rights and responsibilities of the customer.

22 Q. You used the phrase "signature card." That is a kind of
23 pretty important document in banking lexicon, correct?

24 A. That is correct.

25 Q. The signature card is basically the bank's way of knowing

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Finocchiaro - cross

1 who the person authorized to conduct business for this account
2 is, correct?

3 A. Correct.

4 Q. And you testified on direct examination that with respect
5 to GateGuard, the Friend or Fraud Incorporated account, the Ari
6 Teman individual account, essentially all the accounts that you
7 have testified to at Bank of America, the one person with
8 signature authority Was Ari Teman correct?

9 A. That is correct.

10 Q. And bank of America obviously knew that because Bank of
11 America had the signature card and the other depository
12 documents -- my word not yours -- in its possession, correct?

13 A. Correct.

14 Q. So I'm showing you, for example, what's been introduced as
15 Government Exhibit 101.

16 Can you just tell me generally what this document is
17 at Bank of America?

18 A. It is just indicating that the account is being opened
19 under the name of GateGuard, that the -- it is being opened
20 with a corporation out of Delaware. It is indicating that it
21 was being opened on the 17th of November of 2016, with Ari B.
22 Teman as the president.

23 Q. OK. So to be clear, it's -- in March of 2019, in April of
24 2019, the dates that are relevant to this case for purposes of
25 Bank of America, Bank of America clearly knows that GateGuard

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Finocchiaro - cross

1 is a company, of course, but it is Ari Teman at least as far as
2 Bank of America is concerned?

3 A. Correct.

4 Q. And, in fact, there is a signature -- forgive my phrase for
5 using the word signature card but it is not literally a card.

6 What are we looking at on the screen here on page Bates number
7 173?

8 A. It would be the account number ending in 8085, and the
9 signature, the squiggly line indicating he is the president.

10 Q. OK. So we've used the commonly used phrase "signature
11 card." Is this, even though it is a document, not a card, is
12 this a signature card?

13 A. Yes, it is.

14 Q. OK. And this contains the same squiggly line that we see
15 on these checks, correct?

16 A. Correct.

17 Q. Fair to say that the squiggly line on those checks, clearly
18 if Bank of America looked at any of its documents, it would
19 know that's Ari Teman's signature, correct?

20 A. Correct.

21 Q. OK. Now, if we look back at the March deposits, you
22 testified that these were deposited through online banking,
23 correct?

24 A. Correct.

25 Q. And online banking, to access an account, you testified

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Finocchiaro - cross

1 that you are familiar with that system at Bank of America,
2 correct?

3 A. Correct.

4 Q. OK. It's obviously not easy from a bank security
5 standpoint for someone to log into an online banking
6 application, correct?

7 In other words, if I wanted to log into your online
8 banking interface, I would have to know your username and
9 password, correct?

10 A. That is correct.

11 Q. There might even be other futures of authentication, there
12 might not, but is that fair to say?

13 A. It is.

14 Q. OK. In other words, logging into online banking is, for
15 all intents and purposes, the practical equivalent of walking
16 into a bank and introducing yourself, correct?

17 A. It's logging in with your specific username and your
18 specific password, also from a known device, so we capture the
19 device information as well to know that it is a known device
20 that you typically log into.

21 Q. OK. So, in other words, there is no concealing by the
22 depositing of these two RCCs that you've identified as
23 Government's Exhibits 101 and 102 in March of 2019, that those
24 are deposited through GateGuard's specific security features,
25 correct?

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Finocchiaro - cross

1 A. Correct.

2 Q. So whoever deposited them --

3 I know you weren't physically standing there, correct?

4 A. Correct.

5 Q. -- had to have access to those features, correct?

6 A. Exactly, yes.

7 Q. And Bank of America's reasonable assumption is that must be
8 the person who's, first of all, endorsing the check, right?

9 A. Correct.

10 Q. And it must be the person who at least has signature
11 authority or some sort of authority over the account?

12 A. Correct.

13 Q. OK. Now, to be clear, these two RCCs, as you testified,
14 clearly use the language "Draw per contract, no signature
15 required," correct?

16 A. Correct.

17 Q. OK. And that's not hidden somewhere; that's essentially
18 front and center on the check, correct?

19 A. Correct.

20 Q. OK. And both of these include the check number. For
21 example, 201 includes check number 1, correct?

22 A. Correct.

23 Q. 202 includes check number 1, correct?

24 A. Correct.

25 Q. Fair to say that these specifics documents, 201 and 202,

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Finocchiaro - cross

1 clearly indicate to Bank of America that these are RCCs
2 regardless of whether they were drawn with authority or not?
3 A. Correct.

4 Q. OK. In other words, that's not a secret to the bank,
5 correct?

6 A. Correct.

7 Q. It's front and center, it is on the document, there is no
8 hiding it, correct?

9 A. Correct.

10 Q. OK. And Bank of America obviously understood that these
11 were RCCs, correct?

12 A. When they were deposited, the checks are imaged, so we
13 would have known at that time that the checks were from the
14 maker bank, but we wouldn't have seen that they were remotely
15 created checks without physically looking at the checks.

16 Q. OK. Let me break that down for a second.

17 When Bank of America physically looks at the checks,
18 Bank of America clearly knows they are RCCs, corrects?

19 A. Right. If the item is viewed when it is deposited, they
20 would know that it was an RCC.

21 Q. OK. And in fact, you testified in total about 29
22 documents, correct?

23 A. Correct.

24 Q. They all clearly indicate to anyone looking at them who
25 knows what an RCC is that they are an RCC, correct?

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Finocchiaro - cross

1 A. Correct.

2 Q. And Bank of America readily acknowledges that, correct?

3 A. Correct.

4 Q. OK. The catch, as I understood your testimony on direct
5 examination, is that Bank of America had no way of controlling
6 what another bank's customer tells the other bank, correct?

7 A. We do not, no.

8 Q. So, for example, if I understood your testimony correctly,
9 if ABJ, for example, tells I don't remember whether it was ABJ
10 or it was JPMorgan's signature, but you know what I am talking
11 about, right?

12 A. Yes.

13 Q. If ABJ tells its bank that is not Bank of America that
14 these were not authorized, that there is no contract, in
15 essence, Bank of America doesn't independently kind of
16 arbitrate that dispute, correct?

17 A. Do we dispute that? Is that what you are asking?

18 Q. Yes.

19 A. We would review -- we may review that, but there was not a
20 dispute.

21 Q. In other words, Bank of America is not essentially
22 adjudicating that billing dispute between GateGuard, defender,
23 and its customer, correct?

24 A. Correct.

25 Q. So if the customer is wrong, either intentionally or

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Finocchiaro - cross

1 otherwise, and actually there is a contract authorizing this,
2 then Bank of America can't control the fact that it is a
3 chargeback, correct?

4 A. Correct.

5 MR. BHATIA: Objection to form.

6 THE COURT: Overruled.

7 BY MR. GELFAND:

8 Q. You can answer the question.

9 A. Correct.

10 Q. OK. Now, you testified that in April, Mr. Teman -- I'll
11 just connect the dots -- walks into a Bank of America branch,
12 and you testified there is surveillance footage and other
13 documents from that day, correct?

14 A. Correct.

15 Q. So we've got two days. We talked about the mobile deposits
16 on those two initial checks, correct?

17 A. Correct.

18 Q. And then there is this 27 other checks that are broken down
19 into a couple of government exhibits.

20 A. Correct.

21 Q. I am happy to show you any of them that you would like.

22 I'm certainly not trying to trick you or anything. But can we
23 agree that all of those checks include the exact same RCC link
24 which is on those 27 checks?

25 A. They do, yes.

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Finocchiaro - cross

1 Q. And you've reviewed those prior to testifying, correct?

2 A. Yes.

3 Q. So if we just look, for example, at one of them -- we'll
4 look in a minute.

5 You testified that Bank of America captured
6 essentially video -- I am going to probably make it sound more
7 exciting than it is -- video surveillance footage, correct?

8 A. Correct.

9 Q. OK. In capturing video surveillance footage, if I
10 understood your testimony correctly, you were actually the one
11 who within, whatever amount of days, 120 days or something,
12 went and physically got the screenshots that have been
13 introduced into evidence, correct?

14 A. That is correct.

15 Q. OK. And in doing that, you did that -- how many days is it
16 stored?

17 A. It's stored for 120 days.

18 Q. OK. And so within essentially the first couple of months,
19 after that happens -- four months I guess -- you or someone
20 with your similar position at Bank of America can go out and
21 actually access the whole video, not just screenshots, correct?

22 A. That is correct.

23 Q. OK. And I presume that you watched the whole video in
24 capturing the screenshots?

25 A. I did, yes.

Klmdtem5

Finocchiaro - cross

1 Q. OK. The truth is at the bank that day, Mr. Teman was
2 actually there for quite some time, correct?

3 A. Correct. It takes time to process that amount of checks.

4 Q. And Mr. Teman, as you have seen these, quote-unquote,
5 surveillance footage, the clips that you have, when Mr. Teman
6 walked into the bank, he interacted with a number of different
7 people, correct?

8 A. Correct.

9 Q. There was actually a manager who was involved in the
10 transaction, correct?

11 A. I'm not sure if it was a manager or who the other person
12 was.

13 Q. Did it appear that someone brought in someone else's
14 assistance?

15 A. Yes.

16 Q. OK. And throughout the entire interaction, Mr. Teman
17 clearly identified himself, correct?

18 A. Correct.

19 Q. He showed his driver's license, correct?

20 A. Correct.

21 Q. He signed a deposit slip, correct?

22 A. Correct.

23 Q. And obviously on the deposit slip is the correct
24 information, correct?

25 A. Yes.

Klmdtem5

Finocchiaro - cross

1 Q. OK. So Mr. Teman is walking in plain view into Bank of
2 America on April 19th of 2019, if I have the date right?

3 A. April 19th, yes.

4 Q. OK. And clearly identifying himself to the bank as
5 himself, correct?

6 A. Correct.

7 Q. Now, in processing these particular checks, Mr. Teman
8 actually goes physically to a teller, correct?

9 A. Correct.

10 Q. Just so we're speaking the same language, literally the
11 same kind of teller you would get if you walked into any branch
12 today and cashed a check?

13 A. Correct.

14 Q. Or got cash or whatever?

15 A. Correct.

16 Q. If we looked, for example, at Exhibit 111 -- to refresh our
17 memory, do you see 111 in front of you on the screen?

18 A. Yes, I do.

19 Q. I'm going to show the black-and-white version, but the one
20 in evidence is the color one, correct?

21 A. Correct.

22 Q. OK. Fair to say that this -- as you testified, this is on
23 April 19th. This reflects the interaction with the deposit,
24 correct?

25 A. That is correct.

Klmdtem5

Finocchiaro - cross

1 Q. With the teller, correct?

2 A. Correct.

3 Q. And whoever this person is, this is obviously the teller,
4 correct?

5 A. That is correct.

6 Q. OK. Now, fair to say that if you look at this, Mr. Teman
7 made no efforts at all to disguise his identity?

8 A. Correct.

9 Q. OK. He was not wearing a hat?

10 A. No.

11 Q. He doesn't have like a silly mustache or anything, correct?

12 A. Correct.

13 Q. OK. In fact, this branch of Bank of America, you had to
14 have an opportunity to research which branch that was, correct?

15 A. That is correct. It was our Lincoln Road Financial Center.

16 Q. In fact, that is directly across the street from
17 GateGuard's office at the time in Florida, correct?

18 A. I do believe that is directly across the street.

19 Q. OK. And obviously you have that address; you've
20 investigated this for quite some time, correct?

21 A. Correct, yes.

22 Q. So fair to say Mr. Teman was also a regular customer at the
23 bank?

24 A. I do believe that he has done some other activity in our
25 financial center there, yes.

Klmdtem5

Finocchiaro - cross

1 Q. OK. Now, if we look at just one of those other batches of
2 checks --

3 THE COURT: Mr. Gelfand, I am looking for a natural
4 break point for the evening. You let me know when you are at
5 one.

6 MR. GELFAND: Whenever the Court would like.

7 THE COURT: I don't want to interrupt the sequence.
8 If this is a good time?

9 MR. GELFAND: Now is a fine transition time, your
10 Honor.

11 THE COURT: All right. Very good.

12 Ladies and gentlemen, we are going to adjourn for the
13 evening. We've made good progress today, and I appreciate how
14 attentive all of you have been. I want to wish you a good
15 evening. And I will remind you, as I did earlier, please do
16 not discuss or research the case.

17 As to our schedule, at 8:45 tomorrow Mr. Smallman has
18 arranged for breakfast for you in the jury room. As he will
19 explain to you, you should come straight to the jury room. You
20 are at liberty to take us up on the invitation of free food;
21 you are not obliged to do so. But I need to have you here at
22 9:30 promptly. As soon as you are all here at 9:30, I will
23 bring you all out and we'll have a full day of work and make
24 some real headway.

25 Have a good evening. I look forward to seeing you

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Klmdtem5 Finocchiaro - cross

1 tomorrow.

2 Sorry, one other thing. Please, take your notepads
3 and pens to the jury room but do not take them home. Leave
4 them in the jury room. Thank you.

5 (Continued on next page)

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Klmdtem5

1 (Jury not present)

2 THE COURT: All right. Counsel, be seated.

3 Just for planning purposes, Mr. Gelfand, without
4 holding you to it, how much longer do you expect on cross?

5 MR. GELFAND: 20 minutes.

6 THE COURT: 20 minutes, OK.

7 And Ms. Finocchiaro just whispered to me that she has
8 a flight tomorrow. Counsel will coordinate about that. But in
9 any event, she is our first witness tomorrow, and hopefully the
10 jury will be here on time and you will get out promptly.

11 OK. You may step down.

12 (Witness excused)

13 THE COURT: Before we adjourn for the evening, let me
14 just go around and ask if anyone has anything to raise.

15 Government?

16 MR. BHATIA: Nothing, your Honor.

17 THE COURT: All right.

18 Defense?

19 MR. GELFAND: No, your Honor.

20 THE COURT: All right. In terms of just small
21 homework assignments you still have from day one is, from the
22 government, just to get me the updated daily exhibit list, and
23 I am still expecting advice of counsel written proposed
24 instructions from each of you.

25 Very good. If you could -- I am taking a guilty plea

Klmdtem5

1 here momentarily. You don't have to clear off the whole table,
2 but clear off enough space so that there are, let's say, two
3 spots at each table. Thank you.

4 MR. IMPERATORE: Your Honor, I'm sorry. With the
5 Court's permission, I would like to request to attend a
6 pretrial conference tomorrow at 2 o'clock before Judge Rakoff.
7 Brian Blais will be taking my place.

8 THE COURT: My permission isn't needed but I am happy
9 to grant it, of course. That is fine. And I will introduce
10 Mr. Blais to the jury.

11 Sorry. May I ask, just for my preparation overnight,
12 government, without holding you to it but it will be useful for
13 all concerned, after this witness, who are your next several
14 witnesses?

15 MR. BHATIA: So we've given the defense sort of the
16 balance of our list.

17 THE COURT: But for my benefit?

18 MR. BHATIA: Yes, for your benefit now: Elie Gabay,
19 he is an individual associated with Coney LLC, one of the
20 customers.

21 Bonnie Soon-Osberger, she is an individual associated
22 with 18 Mercer Equity, another one of the customers.

23 THE COURT: Right.

24 MR. BHATIA: And then Joseph Soleimani could be
25 tomorrow. He is the individual associated with ABJ Properties.

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1 THE COURT: Right.

2 MR. BHATIA: Jackson Hom and Gina -- I'm sorry,
3 Jacquie Monzon and Gina Hom, who are both from Crystal Real
4 Estate.

5 THE COURT: Terrific. OK. That gives me enough to
6 work on.

7 You should expect at the end of tomorrow I will be
8 taking stock with everyone of how we are doing and how we are
9 looking in terms of time. It is usually my practice at the end
10 of each week to alert the jury how we're doing, and in a
11 shorter trial like this, I want to generally keep them abreast.
12 So as soon as I have a good sense of how we are doing, that
13 might be useful.

14 Have a good evening, counsel

15 MR. GELFAND: Can we safely not have any witnesses
16 tomorrow?

17 THE COURT: Government, it sounds like it is a
18 completely safe thing, correct?

19 MR. BHATIA: I think that's right.

20 THE COURT: Yes.

21 MR. GELFAND: Thank you, your Honor.

22 THE COURT: Thank you for asking.

23 Thank you. We stand adjourned.

24 Off the record.

25 (Pause)

K1mdtem5

1 THE COURT: Counsel, 9 o'clock tomorrow for counsel
2 and the court reporter.

3 (Adjourned to 9 a.m., January 23, 2020)
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K1NVTEM1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

19 CR 696 (PAE)

5 ARI TEMAN,

6 Defendant.

JURY TRIAL

7 -----x

8 New York, N.Y.
9 January 23, 2020
9:05 a.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13 APPEARANCES

14
15 GEOFFREY S. BERMAN,
16 United States Attorney for the
17 Southern District of New York
18 KEDAR S. BHATIA
EDWARD A. IMPERATORE
Assistant United States Attorneys

19 JOSEPH A. DIRUZZO, III
20 JUSTIN GELFAND
Attorneys for Defendant

21 ALSO PRESENT: DANIEL ALESSANDRINO, NYPD
22 WILLIAM MAGLIOCCO, Paralegal, USAO
23
24
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K1NVTEM1

1 (Trial resumed; jury not present)

2 THE COURT: Good morning, everybody.

3 I have nothing of my own initiatives to take up with
4 you this morning. I note that I received an email late
5 yesterday, shortly after the end of the court day, from
6 Mr. Bhatia stating that it was at least possible that the
7 government would rest today.

8 THE DEPUTY CLERK: Judge, one moment please.

9 (Pause)

10 THE COURT: We'll see. But, either way, I've
11 previously given the defense dispensation not to have to call
12 any witnesses today, and that stands.

13 All right. With that, just going around the horn,
14 government, do you have anything to raise this morning?

15 MR. BHATIA: Nothing, your Honor.

16 We noticed that defense filed -- made a filing
17 yesterday with the -- with their proposed advice of counsel
18 defense. I wanted to let the Court know that we're vetting it
19 and looking into it and we'll get something to the Court.

20 THE COURT: Great.

21 Scully gives you a pretty good roadmap. I would be
22 interested in seeing if there's any go-by from a colleague
23 since *Scully*, but it seems to me that *Scully* couldn't be more
24 useful guidance on the subject. But obviously I'm eager to see
25 what you come up with.

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1 MR. BHATIA: Thank you.

2 THE COURT: Do you have the just updated exhibit list
3 for me?

4 MR. MAGLIOCCO: Yes. It's in the binder.

5 THE COURT: Where is it?

6 MR. MAGLIOCCO: It's in your binder.

7 THE COURT: Oh, I'm sorry, no, no. I prefer to just
8 have it by hand so that I can have it by my side as I work.

9 Thank you. Thank you very much, Mr. Magliocco.

10 All right. So, government, anything to raise from
11 you?

12 MR. BHATIA: Nothing, your Honor.

13 THE COURT: Defense?

14 MR. GELFAND: Two very short matters, your Honor.

15 THE COURT: Yes. Go ahead.

16 MR. GELFAND: The first, the parties are in agreement
17 on, I just wanted to advise the Court on that, and that is that
18 there were -- in discovery, within the past week or so, there
19 were -- and it was appropriately disclosed to us; we appreciate
20 it. There were allegations by two government witnesses, one
21 involving charges via credit card to Sublet Spy, which is
22 another business not the subject of this trial.

23 THE COURT: Another business run by Mr. Teman?

24 MR. GELFAND: Yes, your Honor.

25 THE COURT: I'm sorry, when you say "charges," just, I

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1 don't know what you mean by -- allegations or --

2 MR. GELFAND: There were allegations that we would
3 dispute, but there were allegations that Sublet Spy
4 essentially, on a monthly basis, charged a certain witness's
5 credit card that the witness claimed shouldn't have been
6 charged.

7 THE COURT: Right.

8 MR. GELFAND: We would move to exclude that. The
9 government has no intention of getting into it, so it's beyond
10 dispute.

11 THE COURT: All right. In other words, both sides
12 agree that that's not a proper subject for examination?

13 MR. GELFAND: Yes, your Honor.

14 THE COURT: Government, is that correct?

15 MR. BHATIA: That's right. At this time we don't have
16 an intention of getting into it.

17 THE COURT: All right. Then in the event that events
18 change that, the door is opened by something that is elicited,
19 please seek a sidebar before anybody going there. But I'll
20 take that as off limits, unless somebody raises it with me.

21 MR. GELFAND: The second issue falls under the same
22 category, also not a dispute between the parties. And that's
23 that one of the government's anticipated witnesses, Joseph
24 Soleimani, via *Jencks*, for lack of a better way of putting it,
25 basically made -- he has a theory that Mr. Teman contacted

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1 tenants of his on one occasion and had them send rent checks
2 somewhere else, not clear exactly where. We also would ask
3 that that theory or that testimony, that allegation, be
4 excluded from trial.

5 THE COURT: Have you taken that up with the
6 government?

7 MR. GELFAND: We have. And that falls under the same
8 category, your Honor. There's no dispute.

9 THE COURT: All right. Mr. Bhatia, is that correct?

10 MR. BHATIA: That's right, your Honor.

11 And also, subject, of course, to facts changing during
12 trial, and also the defense's representation that they don't
13 intend to get into that on cross, we wouldn't intend to get
14 into it in our --

15 THE COURT: All right. Well, then I will heed what
16 both of you are jointly saying, which is you both believe this
17 is either irrelevant or its relevance is outweighed by
18 countervailing 403 factors.

19 So as with the first subject, in the event that
20 anyone's mind changes because something has happened at trial,
21 raise it with me first; don't go there without affirmative
22 permission from the Court.

23 MR. GELFAND: Yes, your Honor.

24 The third thing is really just for the record.

25 Obviously, this day and age, *Jencks* material is

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1 disclosed in advance of trial, has been disclosed in advance of
2 trial. We appreciate that. But we would just ask the Court to
3 permit us to make a continuing request throughout trial at the
4 close of every government witness for full disclosure of *Jencks*
5 material.

6 THE COURT: Right. I took as a given that if the
7 government meets with a witness after the court day and
8 generates additional 3500 material, that is subject to the
9 ongoing obligation. I doubt the government disputes that.

10 MR. GELFAND: Yes. We just wanted to be on the record
11 requesting *Jencks*.

12 THE COURT: Mr. Bhatia, you're in agreement, correct?

13 MR. BHATIA: That's right, your Honor.

14 We're producing on a rolling basis.

15 THE COURT: Very good.

16 MR. GELFAND: Thank you, your Honor.

17 THE COURT: Mr. Smallman advised me that the defense
18 might want to bring to my attention exhibits that it may or may
19 not use today, something -- I couldn't quite follow what the
20 specific request was.

21 MR. GELFAND: It was a pure housekeeping matter, your
22 Honor.

23 In the ordinary course of just trial preparation, we
24 have premarked certain exhibits that we obviously might or
25 might not introduce at trial. All relative have been disclosed

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1 to the government in discovery, some with exhibit stickers on
2 it, some without. But there's going to be no surprises there.

3 What I was wanting to know is whether the Court
4 basically wanted an advanced copy of those or whether we should
5 just take it up as the witnesses testify.

6 THE COURT: If you're not going to offer it, I don't
7 need to see it.

8 MR. GELFAND: Okay.

9 THE COURT: If you are going to offer it, I'd be happy
10 to have it with the exhibit number as marked, if only to just
11 keep my papers in order. And if it's not clear, I leave it to
12 your good judgment. But, either way, at the time that you
13 present the exhibit to the witness, I'll need a copy. I'd like
14 one for my law clerk as well.

15 Your call. I'm happy to have it if you're going to be
16 offering it.

17 MR. GELFAND: Okay. I just wanted to raise that.

18 We'll get it organized ourselves with that guidance
19 and provide it accordingly.

20 THE COURT: Very good.

21 One moment.

22 All right. I don't have anything further.

23 Anyone? Nothing to raise?

24 MR. BHATIA: No, your Honor.

25 MR. GELFAND: No, your Honor.

K1NVTEM1

1 THE COURT: Defense, is it still your expectation --
2 not holding you to it -- that Ms. Finocchiaro will be on cross
3 for approximately 20 more minutes or so?

4 MR. GELFAND: It is, your Honor. And I've had that
5 opportunity to get it even more organized, so hopefully that
6 saves some time.

7 THE COURT: Very good.

8 Why don't we have her in the box before the jury comes
9 in so that they are not wasting time watching her march
10 forward.

11 And government, your next witness will still be Elie
12 Gabay?

13 MR. BHATIA: That's right.

14 THE COURT: Very good.

15 And that witness will be here and ready to go as soon
16 as Finocchiaro is done?

17 MR. BHATIA: That's right.

18 THE COURT: Terrific.

19 All right. I will be ready to take the bench at 9:30,
20 or as soon as Mr. Smallman tells me thereafter that the jury is
21 here. Thank you, see you at 9:30.

22 (Recess)

23 MR. GELFAND: Your Honor, may I approach and provide
24 you two copies of exhibits?

25 THE COURT: You may.

K1NVTEM1

Finocchiaro - cross

1 These are defense exhibits that may or may not be used
2 during this witness's examination?

3 MR. GELFAND: Correct, your Honor.

4 THE COURT: Very good.

5 MR. GELFAND: Thank you.

6 THE COURT: Is this one set or two?

7 MR. GELFAND: That's one set, your Honor. I was not
8 aware of the request for the law clerk.

9 THE COURT: Oh, okay. Going forward, that would be
10 great. Thank you.

11 (Jury present)

12 THE COURT: I hope you all had a good evening.

13 We're about to resume with the trial.

14 Ms. Finocchiaro, I'll remind you that you're still
15 under oath.

16 THE WITNESS: Yes.

17 THE COURT: Mr. Gelfand, you may inquire.

18 MR. GELFAND: Thank you, your Honor.

19 KAREN FINOCCHIARO, resumed.

20 CROSS-EXAMINATION (continued)

21 BY MR. GELFAND:

22 Q. Good morning, Ms. Finocchiaro.

23 A. Good morning.

24 Q. Can I ask you to speak up a little bit in the mic.

25 A. Good morning.

K1NVTEM1

Finocchiaro - cross

1 Q. Good morning.

2 Ms. Finocchiaro, when we left off yesterday, we had
3 ended our discussion on the March 28th, 2019 RCCs; correct?

4 A. Correct.

5 Q. And as you testified, those were two of the 29 total RCCs
6 that are at issue in this case; correct?

7 A. That is correct.

8 Q. And you're familiar with all of the RCCs, not just the two
9 that we discussed; correct?

10 A. Correct.

11 Q. Okay. And as we talked about yesterday, all 29 of those
12 RCCs clearly bear indicia to the bank that they are, in fact,
13 RCCs; correct?

14 A. Correct.

15 Q. Okay. Now, directing your attention to the April 19th --
16 if I have the date right -- 2019, deposits, there were 27
17 deposits in the bank that you testified -- I'm sorry, the
18 deposits of 27 RCCs into the bank that you testified about
19 yesterday; correct?

20 A. Correct.

21 Q. And we talked about what actually happened in the bank
22 itself; correct?

23 A. Correct.

24 Q. And the screenshots that you provided from the video
25 footage that you collected early on in this matter; correct?

K1NVTEM1

Finocchiaro - cross

1 A. Correct.

2 Q. And to be clear, the video itself is no longer available;
3 correct?

4 A. Correct.

5 Q. Are you aware that we have requested the video, but that
6 your bank told us that it's no longer available?

7 A. Correct. If it's after 120 days, it's no longer available.

8 Q. Okay. And to be clear, early on, as far as you know, at
9 least, no one on the bank took any efforts to preserve the
10 video itself, as opposed to the screenshots that we've all
11 seen; correct?

12 A. As far as I'm aware, there was not a preservation letter
13 that was requested to save the film.

14 Q. Okay. During that time period, you were in contact with
15 the NYPD detective; correct?

16 A. That is correct.

17 Q. And the NYPD never requested that that be preserved;
18 correct?

19 A. That is correct.

20 Q. Did the film video footage have audio as well or is it just
21 soundless?

22 A. It does not have audio.

23 Q. Okay. So based on your review of the film -- well, just to
24 be clear, you've watched the whole film; correct?

25 A. Correct.

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Finocchiaro - cross

1 Q. Based on your review of the film, as you described
2 yesterday, it was -- and I'm approximating, but approximately a
3 one-hour video of Mr. Teman physically in the Miami bank
4 branch; correct?

5 A. I don't recall the duration, but there was a lengthy
6 period.

7 Q. In other words, this wasn't some two-minute episode of
8 going to a bank teller; correct?

9 A. Not that I recall.

10 Q. Now, I want to direct your attention to some of those April
11 19th RCCs. I'm showing you what's been previously admitted as
12 Government's Exhibit 205.

13 THE COURT: Ladies and gentlemen, can everyone see the
14 monitor okay?

15 THE JURY: Yes.

16 THE COURT: Good.

17 Q. And you recognize this document; correct?

18 A. I do.

19 Q. Okay. When the prosecutor asked you about some of these
20 RCCs yesterday, is it fair to say that the numbers might be
21 different and the entities are the three entities identified in
22 this case, but that substantively these are virtually identical
23 documents?

24 A. They are similar. Some of them are different, with the
25 disclosure that's read.

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Finocchiaro - cross

1 Q. To be clear, on each of these April 19th, 2019 documents,
2 the same language appears on the bottom; correct?

3 A. I believe -- without looking at all of the checks in that
4 series, I do believe that they are all similar with this, this
5 disclosure.

6 Q. Okay. I'm happy to show you them, but it sounds like
7 you're fairly confident?

8 A. Yes.

9 Q. Okay. So if we look at just any of them, for example, this
10 is the top page, Bates No. 35 of Exhibit 205, they all clearly
11 say, "Draw per contract. No signature required." Correct?

12 A. Correct.

13 Q. They all include the URL that you testified about
14 yesterday; correct?

15 A. Correct.

16 Q. They indicate that the above client, referring in this
17 case, for example, to ABJ Lennox LLC, accepted the terms;
18 correct?

19 A. They do -- that's what the check indicates, that draw per
20 contract.

21 Q. I'm just asking you what it says. To be clear, you don't
22 know one way or the other whether or not those individuals
23 accepted the terms or didn't; correct?

24 A. That is correct.

25 Q. To this day, Bank of America is not taking a position on

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Finocchiaro - cross

1 whether that's a true statement or a false statement; correct?

2 A. That is correct.

3 THE COURT: Ms. Finocchiaro, just kindly keep your
4 voice up. Speak a little more into the microphone.

5 A. That is correct.

6 THE COURT: Thank you.

7 Q. And then there is the contact info that you testified about
8 that is GateGuard's contact number; correct?

9 A. I would believe that would be GateGuard's contact
10 information if it was provided on the document.

11 Q. You testified that you couldn't access the URL just because
12 of, essentially, Bank of America's IT filter?

13 A. Correct.

14 Q. Correct.

15 And you didn't make any efforts to look through other
16 avenues, like your phone or home computer or anything like
17 that; correct?

18 A. Correct.

19 Q. Did you ever call this number with questions?

20 A. I did not.

21 Q. You described, based on your experience in the banking
22 industry, various characteristics of checks or RCCs in general;
23 correct?

24 A. Correct.

25 Q. And one of the things that you testified about was the memo

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Finocchiaro - cross

1 line; correct?

2 A. Correct.

3 Q. Is it fair to say that the memo line, as far as Bank of
4 America is concerned, is not a particularly important line?

5 A. It's a description line, so it's not -- I mean, it does
6 give a description of what the check may be for, but it's
7 typically in reference for the -- if the customer were to have
8 viewed the check, so the maker, that they would have a
9 description of what that was for.

10 Q. Okay. Basically, a shorthand convenience factor for the --

11 A. Correct. It's not required.

12 Q. Okay. And so fair to say when it comes to whether the bank
13 honors or doesn't honor -- and when I say "the bank," I mean
14 Bank of America, honors or doesn't honor a check, the memo line
15 itself is not a factor?

16 A. It is not.

17 Q. Now, these 27 RCCs do not include or purport to include any
18 sort of check number; correct?

19 A. They do not.

20 Q. They don't contain any signature; in fact, they say that in
21 very clear terms. Correct?

22 A. Correct.

23 Q. And just to be clear, for the benefit of all of us, there's
24 some notations on the top. Those are bank notations; correct?

25 A. That is correct.

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Finocchiaro - cross

1 Q. In other words, this was not -- whatever handwriting up
2 here is on the top left corner of some of these checks, I don't
3 mean this in a bad way, but that's something the bank wrote on
4 it, not what either Mr. Teman wrote --

5 A. I do believe that it's something that the teller has -- has
6 signed or put their initials on.

7 Q. Now, you testified yesterday when the government showed you
8 that voluminous spreadsheet --

9 A. Yes.

10 Q. -- that there was a reference to counter credit on April
11 19th of 2019; correct?

12 A. Correct.

13 Q. Okay. To be clear, that's also reflected in Government
14 Exhibit 102, which is admitted.

15 Can you just tell me, do you recognize what this
16 document is, just so we can contextualize ourselves?

17 A. That is the customer statement for GateGuard.

18 Q. I'm sorry?

19 A. For GateGuard.

20 Q. These are Bank of America's bank statements, if you will,
21 for GateGuard for a select period of time?

22 A. That is correct.

23 Q. You provided these to the government; correct?

24 A. I did. That is correct.

25 Q. And if we look through this statement just briefly, we see

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1 the relevant time frame for April; correct?

2 A. That is correct, yes.

3 Q. And we see on April 19th of 2019 the counter credit
4 referenced in the amount of \$297,000; correct?

5 A. That is correct.

6 Q. And even though this is a different document, this is
7 essentially the document or the same data from which the
8 spreadsheet was populated; correct?

9 A. That is correct.

10 Q. To be clear, when the deposit was made, a deposit slip was
11 completed and kept in the ordinary course and practice of the
12 bank; correct?

13 A. That is correct.

14 Q. Okay.

15 And just so we all understand, what is a deposit slip?

16 A. A deposit slip is something that the customer fills out
17 when they are making the deposit. It has the customer's name,
18 account number that it's being deposited to, and the amount
19 that is being deposited. It describes whether you're
20 depositing cash or whether you're depositing checks.

21 Q. I'm showing you what's been admitted as Government's
22 Exhibit 206. Can you tell us what that is?

23 A. That is the deposit slip on 4/19 for the deposit to
24 GateGuard for the amount of \$297,000.

25 Q. Okay. So to be clear, just in simple English, this is the

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1 deposit slip that correlates with the deposit that you've been
2 testifying about; correct?

3 A. That is correct.

4 Q. And you pulled this and provided it for the government;
5 correct?

6 A. That is correct.

7 Q. It references April 19th, the date; correct?

8 A. Correct.

9 Q. It references the same amount; correct?

10 A. That is correct.

11 Q. And it references GateGuard and its business location in
12 Miami Beach on that same road as the bank branch, Lincoln Road;
13 correct?

14 A. That is correct.

15 Q. Now, if we look -- it's a little bit tough to see. I'm
16 showing you on the bottom -- I'm going to zoom in as much as I
17 can. Can you see that on the screen in front of you, ma'am?

18 A. I can, yes.

19 Q. Okay. This text that appears on the bottom, that's
20 generated by the bank; correct?

21 A. That is correct.

22 Q. Okay. And it references the date, the time, the deposit;
23 correct?

24 A. That is correct.

25 Q. The available balance of approximately 20-some thousand

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Finocchiaro - cross

1 dollars; correct?

2 A. That is correct.

3 Q. And then can you read the part that I've circled on the
4 screen, beginning with "holds"?

5 A. "Holds applied see hold notice deposit."

6 Q. Okay. What does that mean?

7 A. It means that applicable holds were placed on the checks
8 that are coming in.

9 Q. When you say "holds were placed," that means that
10 GateGuard, Mr. Teman, whoever you want to say, didn't have
11 access to this money until the holds were lifted; correct?

12 A. That is correct.

13 Q. Okay. So to be clear, when we see things like counter
14 credit of \$297,000 on April 19th, no one actually had access to
15 that money on that day; correct?

16 A. On that day, he would not have had access to that; he would
17 have only had access to what is indicated as the available
18 balance.

19 Q. Which was the amount of money previously in the account
20 that has nothing to do with these deposits; correct?

21 A. That is correct.

22 Q. So, in other words, he would have access to the money he
23 had, he wouldn't have access to the money that was deposited
24 via these RCCs?

25 A. Right. He can see the deposit and he can see the amount in

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Finocchiaro - cross

1 there, but he's not able to access the account at that time.

2 Q. And, in fact, as a bank employee of Bank of America, an
3 investigator for two decades plus, are you familiar with bank
4 forms?

5 A. Yes.

6 Q. Are you familiar with -- this says "see hold notice." Are
7 you familiar with Bank of America notices of hold?

8 A. Typically, yes. Our holds are for two days if they are an
9 on-us check, meaning that it's a Bank of America check that's
10 being deposited. Obviously we have the ability at that time to
11 see the source of funds in another account. Our hold notices
12 are, in fact, typically seven days for a check that is another
13 bank. So in this case, Signature or JPMorgan Chase, we would
14 apply a seven-day hold.

15 Q. Okay. And, in fact, that's exactly what happened here;
16 correct?

17 A. That is correct.

18 Q. And this notice of hold, that's basically a receipt that's
19 given to the person making the deposit; correct?

20 A. That is correct.

21 Q. Okay. And have you seen the notice of hold that was issued
22 in this case?

23 A. I did not see -- I mean, I noticed that there was a hold
24 that was applied, it's a standard typical hold; but I didn't
25 see any additional documentation in regards to the hold.

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Finocchiaro - cross

1 MR. GELFAND: Okay. If I may approach and show the
2 witness what's been premarked as Defense Exhibit 16.

3 THE COURT: This is just for the witness right now,
4 it's not in evidence.

5 MR. GELFAND: Yes.

6 THE COURT: All right.

7 Ladies and gentlemen, from time to time, a document
8 will be shown or an exhibit will be shown to the witness and
9 will be accessible to counsel and not to you. The reason
10 that's happening is that until I rule that the exhibit can be
11 received in evidence, you can't see it.

12 So I need to look at it, the witness needs to look at
13 it, the lawyers may need to ask questions to the witness about
14 it. Once I decide it can properly be received in evidence,
15 Mr. Smallman pushes a button, and then it's accessible to you.
16 We're not trying to hide anything from you; I just need to go
17 through the hoops of making sure that it's properly received in
18 evidence.

19 Go ahead.

20 MR. GELFAND: Thank you.

21 THE COURT: Mr. Smallman. Yes. Very good.

22 Go ahead.

23 BY MR. GELFAND:

24 Q. I'll zoom in on the text, but just so that we're clear for
25 the record, can you see the whole context of this document

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1 right now?

2 A. It's cut off on the side.

3 Q. To be clear, this was not directly provided by the bank;
4 correct?

5 A. I did not provide this.

6 Q. Okay.

7 MR. GELFAND: Your Honor, can I show the witness a
8 hard copy of this? I think it's pretty tough --

9 THE COURT: I'm sorry, Mr. Gelfand, a little louder.

10 MR. GELFAND: Can I show the witness a hard copy of
11 this?

12 THE COURT: You may. It appears though what's on the
13 screen is cut off on the document itself.

14 MR. GELFAND: Yes, your Honor.

15 BY MR. GELFAND:

16 Q. Does that appear to be a photograph of a notice of hold
17 form issued by Bank of America?

18 A. It does appear to be.

19 Q. And specifically, if you look -- without reading it into
20 the record, if you look at the dates, the total deposit number,
21 and the hold code, does this appear to correlate with the
22 deposit slip and the April 19th deposit?

23 A. Yes, it does.

24 MR. GELFAND: Your Honor, at this point I would move
25 Defense Exhibit 16 into evidence.

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Finocchiaro - cross

1 THE COURT: Any objection?

2 MR. BHATIA: No objection, your Honor.

3 THE COURT: Defense Exhibit 16 is received.

4 (Defendant's Exhibit 16 received in evidence)

5 THE COURT: Do you now want that published to the
6 jury?

7 MR. GELFAND: Yes, your Honor.

8 THE COURT: Mr. Smallman. Thank you.

9 MR. GELFAND: Thank you.

10 THE COURT: All right. Ladies and gentlemen, it
11 should now be on your monitors.

12 Sorry. It should now be on your monitors.

13 MR. GELFAND: When I do my job.

14 BY MR. GELFAND:

15 Q. So this is a little bit tough to read on just the
16 presentation of it, but can you just read for all of us the
17 date of the notice of hold?

18 A. 4/19/2019.

19 Q. And then the amount is the same, \$297,000?

20 A. That is correct.

21 Q. This is unfortunately going to be very difficult for the
22 jury to read, but can you tell us when the \$292,000 will be
23 available?

24 A. On 4/26 of 2019.

25 Q. So seven days later; correct?

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Finocchiaro - cross

1 A. Correct.

2 Q. And that's consistent with what you testified you
3 anticipated the hold would be; correct?

4 A. Correct.

5 Q. Fair to say that's what happened here?

6 A. Correct.

7 Q. So between April 19th and April 26th, the money was not
8 available to anyone; correct?

9 A. Correct.

10 Q. Okay. And, in fact, based on your review of what actually
11 happened at the bank branch, Mr. Teman was actually handed this
12 notice of hold; correct?

13 A. It should have been -- it was provided, yes.

14 Q. Okay. And there wasn't any pushback by Mr. Teman of, Hold
15 on. If it's not available right now, let me have these RCCs
16 back, or anything crazy like that, right?

17 A. I wasn't present. I'm unaware.

18 Q. Based on what you observed on the video that you watched
19 that's no longer available, does anything like that appear?

20 A. There's no audio, so I'm unable to indicate.

21 Q. The deposits maintained -- I'm sorry, the RCCs were
22 maintained in Bank of America's possession after that
23 interaction with the teller; correct?

24 A. Correct.

25 Q. Now, you then testified that --

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Finocchiaro - cross

1 THE COURT: Mr. Gelfand, can the witness put the
2 exhibit down?

3 MR. GELFAND: Yes, your Honor.

4 THE COURT: Okay.

5 MR. GELFAND: Thank you.

6 Q. The purpose of the hold is to confirm that the funds should
7 be made available; correct?

8 A. Right. It levels as an expectation for the customer that
9 the funds are on hold and when the funds would be available.

10 Q. Now, the government showed you what's been marked as
11 Exhibit 114. Do you recognize that document?

12 A. I do, yes.

13 Q. Over and over on this document there's the text "RCC
14 warranty breach"; correct?

15 A. Correct.

16 Q. And that's under the column "Reason"; correct?

17 A. That is correct.

18 Q. Does Bank of America populate that column?

19 A. This is something that is digitally sent to us with the
20 reason code and the explanation of the reason code from the
21 maker bank.

22 Q. Okay. So to be clear, Bank of America is not
23 characterizing the event as an RCC warranty breach; in this
24 case, Signature Bank and JPMorgan are doing that. Correct?

25 A. That is correct.

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Finocchiaro - cross

1 Q. Bank of America is just reporting what's told to Bank of
2 America; correct?

3 A. That is correct.

4 Q. And if we look through this document, these RCC warranty
5 breach notations are correlated with many of the RCCs that were
6 received in evidence; correct?

7 A. That is correct.

8 Q. And on the second page of this document, we see that
9 language again, and then the prosecutor asked you questions
10 about the five or four, quote/unquote, counterfeit check
11 designations at the bottom; correct?

12 A. That is correct.

13 Q. And this was the same reason code column; correct?

14 A. Correct.

15 Q. Okay. So again, this is not Bank of America saying this is
16 a counterfeit check; correct?

17 A. That is correct.

18 Q. This is the reason or the code generated by, you said, the
19 maker bank, I just want to be very precise, Signature and/or
20 JPMorgan?

21 A. That is correct.

22 Q. And is it fair to say that what's basically being
23 communicated to Bank of America in this instance is that those
24 banks' customers are saying that this is an unauthorized RCC?

25 A. That is correct.

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Finocchiaro - cross

1 Q. In charging back -- I think that's the term you used
2 yesterday; correct?

3 A. A chargeback; correct.

4 Q. In requesting or insisting on chargebacks from Bank of
5 America, none of these other banks provided the GateGuard terms
6 and conditions or payment terms to Bank of America; correct?

7 A. That is not required.

8 Q. Fair enough. But I'm just asking if that happened?

9 A. They did not.

10 Q. Okay. Now, when you testified yesterday, you testified to
11 that document. But the bank also sends individuals -- in this
12 case account holders like GateGuard -- correspondence if checks
13 are basically returned; correct?

14 A. That is correct. It is provided.

15 MR. GELFAND: Your Honor, at this point, pursuant to
16 the stipulation read by government counsel yesterday, I would
17 move into evidence Defense Exhibit 52.

18 THE COURT: Any objection?

19 MR. BHATIA: No objection.

20 THE COURT: Received.

21 (Defendant's Exhibit 52 received in evidence)

22 MR. GELFAND: May I publish it, your Honor?

23 THE COURT: You may.

24 Q. Do you see Exhibit 52?

25 A. Yes, I do.

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Finocchiaro - cross

1 Q. Okay. And these use the same language, "RCC breach" on
2 them; correct?

3 A. Correct.

4 Q. And then on the side, Bank of America says: "Return
5 reason-4 RCC warranty breach"; correct?

6 A. That is correct.

7 Q. And they reference copies, in this case, of 24 checks;
8 correct?

9 A. I haven't seen all of the checks, but most of the checks
10 should be present on the document.

11 Q. Okay. I'll ask it another way.

12 The bank provided copies of each of the RCCs that are
13 at issue in --

14 A. That is correct. Yes.

15 Q. And that would be inclusive in the document; correct?

16 A. Correct.

17 Q. Okay. And what does "return reason-4" mean, if you know?

18 A. I don't know the code right offhand.

19 Q. But, again, what this is communicating to the customer,
20 GateGuard, is that these were RCCs that were basically not
21 honored by the customer, for example, ABJ or the others on
22 here?

23 A. That is correct.

24 Q. So Bank of America is not saying to Mr. Teman or GateGuard,
25 These are counterfeit checks, these are fake checks, anything

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Finocchiaro - cross

1 along those lines. They are saying, We processed them as RCCs.
2 And the banks that they were drawn on said that their customers
3 are saying we didn't authorize this?

4 A. In regards to the RCCs, their return reason is RCC.
5 However, some of them are listed as counterfeit.

6 Q. By those banks; correct?

7 A. That is correct.

8 Q. Okay. Now, in processing the RCCs, you testified that
9 there was the seven-day hold. And then yesterday the
10 prosecutor walked you through transfers within Bank of America
11 of money that followed, started on April 26th and followed the
12 next couple of weeks; correct?

13 A. That is correct.

14 Q. Okay. And, in fact, each of those transfers were made from
15 GateGuard's Bank of America account to other Bank of America
16 accounts; correct?

17 A. That is correct.

18 Q. And each of those accounts, starting with, for example, the
19 corporate accounts, Friend or Fraud Incorporated, Touchless
20 Labs LLC, those are other businesses that Bank of America holds
21 accounts for, held accounts for, that were associated with Ari
22 Teman; correct?

23 A. Correct.

24 Q. And the bank was on notice for quite some time that these
25 were Ari Teman's businesses; correct?

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Finocchiaro - cross

1 A. Correct.

2 Q. So I showed you, for example, the signature card yesterday
3 for GateGuard; correct?

4 A. Correct.

5 Q. I'm going to show you Government Exhibit 103 real briefly.
6 Is this the signature card for Friend or Fraud?

7 A. It is, yes.

8 Q. And does it reference that Friend or Fraud is controlled by
9 Ari Teman, at least as far as the bank is concerned, since
10 April of 2016?

11 A. That is correct.

12 Q. And similarly, I'm going to show you Government Exhibit
13 105. Again, just at least as far as the bank is concerned,
14 does it show you Touchless Labs LLC as controlled by Ari Teman
15 since March of 2016?

16 A. Yes, it does.

17 Q. And these are Delaware entities; correct?

18 A. That is correct.

19 Q. So to be clear, when money was moved, money was moved
20 essentially from one account that Ari Teman controlled to other
21 accounts that Ari Teman controlled as far as Bank of America is
22 concerned?

23 A. That is correct.

24 Q. And have you reviewed the bank records of these entities?

25 A. Yes, I have.

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Finocchiaro - cross

1 Q. Fair to say that they are operating entities, at least they
2 appear to be based on the transactions?

3 A. Yes.

4 MR. BHATIA: Objection, your Honor.

5 THE COURT: One moment.

6 Sustained.

7 Q. Are there deposits into these accounts?

8 A. I'd need to see the records for each of those accounts, but
9 based on my recollection, I do believe that there was other
10 deposits and other transactions in those accounts.

11 Q. In other words, unrelated to GateGuard?

12 A. Correct.

13 Q. Now, you testified that on April 26, some money was moved
14 from the Friend or Fraud corporate account to an individual
15 account also at Bank of America held in the name of Ari Teman;
16 correct?

17 A. Correct.

18 Q. And, in fact, there were some questions about money from
19 that account. And a couple of days later, on April 29th and
20 May 1st, the prosecutor asked you about international wire
21 transfers to China; correct?

22 A. Correct.

23 Q. And you read -- well, rack your brain on what the company
24 was, but there was a Chinese entity bank account that those
25 checks were sent to; correct?

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Finocchiaro - cross

1 A. Correct.

2 Q. Are you aware that that company is a supplier for
3 GateGuard?

4 MR. BHATIA: Objection.

5 THE COURT: Sustained.

6 Q. You testified on May 8th that \$4,000 was withdrawn in cash;
7 correct?

8 A. That is correct.

9 Q. To be clear, what's a cashier's check?

10 A. A cashier's check is an official item that the customer can
11 purchase from their account so the cash is withdrawn, it's
12 turned into an official item.

13 Q. Okay. And to be clear, what happened here is that,
14 quote/unquote -- let's back up for a second.

15 If I walk into a Bank of America branch and I purchase
16 a \$4,000 cashier's check, for example, the bank's not
17 physically handing me \$4,000 of cash and I'm not physically
18 handing it back; correct?

19 A. Correct.

20 Q. The bank is basically treating it as a, quote/unquote, cash
21 withdrawal, but, for all intents and purposes, just giving me a
22 cashier's check to whomever I ask it be written out to;
23 correct?

24 A. Correct.

25 Q. And the reason that a cashier's check is significant is

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Finocchiaro - cross

1 that the person receiving it has security that the bank will
2 honor it?

3 A. It's an official item that's then drawn on the bank. And
4 it's not specific to that account any longer, it's -- it's an
5 official item that's issued by the bank.

6 Q. Okay. In this particular case, if you know, was a
7 cashier's check issued to a Levi Herman on that day in the
8 amount of \$4,000?

9 A. I'm unable -- I do not have that information.

10 Q. Okay. That wouldn't be reflected in the bank statements
11 though; correct?

12 A. It would not.

13 Q. It would just be reflected as a, quote/unquote, cash
14 withdrawal; correct?

15 A. Correct.

16 Q. Is it fair to say, based on the bank statements you've
17 reviewed, you can't say one way or the other whether Mr. Teman
18 walked out of the bank with cash or walked out of the bank with
19 a cashier's check to an individual?

20 A. Unless it's an exhibit, I'm unable to.

21 Q. And it's not something that was provided to the government;
22 correct?

23 A. Not that I recall.

24 Q. Okay. Now, after the bank received the RCC chargebacks
25 from Signature Bank and JPMorgan Chase, the bank had

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Finocchiaro - cross

1 interactions with Ariel Reinitz on GateGuard's behalf; correct?

2 A. Can you say the name again?

3 Q. Let me ask this: Are you aware that GateGuard's attorney
4 had communications with Bank of America in May of 2019 about
5 the nature of what you've testified about, about these RCCs?

6 MR. BHATIA: Objection, your Honor. 401, 403.

7 THE COURT: Foundation. Sustained.

8 Q. Ms. Finocchiaro, the bank -- the government asked you
9 questions on direct examination about how the bank was
10 considering the offset issue yesterday; correct?

11 A. Correct.

12 Q. In the context of those discussions, did the bank have
13 communications with GateGuard's legal counsel, Ariel Reinitz?

14 MR. BHATIA: Objection.

15 THE COURT: Sustained. Lack of foundation.

16 She's a records custodian. You can ask her if she had
17 those communications.

18 Q. Have you seen records of communications held by the bank
19 with any attorney on behalf of GateGuard?

20 MR. BHATIA: Objection.

21 THE COURT: Just a yes or no.

22 A. Yes.

23 Q. And based on your review of those records, were there
24 communications -- I'm not asking about the substance of them.
25 Were there communications between GateGuard's legal counsel and

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Finocchiaro - cross

1 Bank of America about the offset issue?

2 THE COURT: Just a yes or a no.

3 A. Trying to recall. I do not believe that there was any
4 questions in regards to the offset.

5 THE COURT: Mr. Gelfand, if the records are not in
6 evidence, it would be hearsay for her to be speaking about
7 their content. Let's move on.

8 Q. Now, you testified yesterday that the bank essentially is
9 holding a significant amount of money from GateGuard and other
10 accounts that you've testified about, Touchless Labs, etc.;
11 correct?

12 A. The bank has the funds that are in -- being -- that are in
13 an account; they are not being held. The checks were -- in
14 fact, I had indicated yesterday -- sent to the mailing address
15 for Mr. Ari B. Teman in regards to each and every account. And
16 the checks were returned to the bank based on the address
17 provided.

18 Q. Now, during this whole time period, what I mean by "this
19 whole time period" is between March and April of 2019, when the
20 RCCs were deposited and when Bank of America was made aware
21 that there was a criminal investigation, the bank had processed
22 these as basically breach warranty RCCs; correct?

23 A. They were processed as breach of warranty and counterfeit,
24 yes.

25 Q. And is it fair to say that the government, meaning law

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Finocchiaro - cross

1 enforcement, came to Bank of America requesting information
2 about this as opposed to Bank of America going to law
3 enforcement?

4 MR. BHATIA: Objection.

5 THE COURT: Foundation. Sustained.

6 Q. When did you first become involved in providing information
7 to the government, meaning law enforcement, in connection with
8 this case?

9 A. It was on April the -- or, I'm sorry, May the 15th.

10 Q. Did you contact them or did they contact you?

11 A. They were in contact with me.

12 Q. I'm sorry, I couldn't hear you.

13 A. They were in contact with me.

14 Q. Okay. Who initiated the contact?

15 MR. BHATIA: Objection. 401 and 403.

16 THE COURT: Sustained. Relevance.

17 Q. Over the course of the next several months, you provided
18 information to the government in connection with this case from
19 the bank; correct?

20 MR. BHATIA: Objection.

21 THE COURT: Overruled.

22 A. I was in contact and I did provide information in regards
23 to the account.

24 Q. Finally, just showing you, just briefly, again, for
25 example, Defense Exhibit 52, just an example of one of the

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Finocchiaro - cross

1 RCCs, as far as -- well, to be clear for a second, these were
2 all made payable to GateGuard, Inc., the corporation; correct?
3 A. That is correct.

4 Q. Fair to say the bank doesn't know one way or the other
5 whether there's anything on here that is false?

6 A. When the check is presented, we're not aware at that time.

7 Q. And to be clear, as you previously testified, you don't
8 know whether anything in this "draw per contract" box is false;
9 correct?

10 A. Correct.

11 Q. And the rest of the RCCs basically just include the payor,
12 the payee, the dollar amount, the memo line, and the date;
13 correct?

14 A. Correct.

15 MR. GELFAND: Your Honor, may I have one minute?

16 THE COURT: You may.

17 (Counsel conferred)

18 MR. GELFAND: I have no further questions.

19 Thank you, ma'am.

20 THE COURT: All right.

21 Thank you, Mr. Gelfand.

22 Any redirect, Mr. Bhatia?

23 MR. BHATIA: Excuse me?

24 THE COURT: Any redirect?

25 MR. BHATIA: Yes, your Honor.

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Finocchiaro - redirect

1 REDIRECT EXAMINATION

2 BY MR. BHATIA:

3 Q. Ms. Finocchiaro, you testified -- you were asked some
4 questions about Bank of America's financial responsibilities,
5 right?

6 A. That is correct.

7 Q. And do you recall being asked some questions on
8 cross-examination about how Bank of America reviews checks?

9 A. Yes.

10 Q. And its obligations when funds are coming out of accounts?

11 A. Correct.

12 Q. And are accounts at Bank of America insured by the Federal
13 Deposit Insurance Corporation?

14 A. Yes, they are.

15 Q. That's the FDIC?

16 A. Yes, they are.

17 Q. And when Bank of America is trying to determine if a check
18 is authorized, if it's legitimate, is it trying to find out if
19 the person receiving the money is authorized to receive it or
20 if the person sending the money authorized the money to be
21 sent?

22 A. It's authorizing was the money authorized to be sent and
23 received.

24 MR. BHATIA: Could we pull up as an example Government
25 Exhibit 201. We can go to the top of this page. Thank you.

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Finocchiaro - redirect

1 Q. So just to get a little bit more specific, this was a check
2 deposited at Bank of America?

3 A. That is correct.

4 Q. And you were asked some questions about whether this
5 signature is Ari Teman's; is that right?

6 A. Correct.

7 Q. Or whether it looks like the ones on the signature cards?

8 A. Correct.

9 Q. And Ari Teman is GateGuard -- or is the signatory for
10 GateGuard, right?

11 A. Yes. Correct.

12 Q. What information -- so he was the one getting the money,
13 right?

14 A. He was the one receiving the funds, essentially, on behalf
15 of GateGuard.

16 Q. The person receiving the funds is usually happy to get
17 them?

18 MR. GELFAND: Objection, your Honor.

19 THE COURT: One moment.

20 Sustained.

21 Q. The person who was sending -- the person who was going to
22 have less money than they had before was up here, right, 518
23 Coney 205 LLC?

24 A. In this check case, yes.

25 Q. And what information did the bank receive about whether

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Finocchiaro - redirect

1 that person had authorized the check?

2 A. If the initial deposit we didn't have any information, it
3 goes to the clearinghouse process, the Federal Reserve. And
4 then we receive back the information. So at the time of the
5 deposit we did not.

6 Q. And at the time, what -- subsequently, what information did
7 the bank get about whether that person, 518 West 205 LLC, had
8 approved the check?

9 A. We received the information that they were not approving
10 this check; that essentially it was a breach of warranty and,
11 in some cases, they were counterfeit.

12 Q. And is that true of all of the 29 checks that you testified
13 about?

14 A. That is correct.

15 Q. So you received information that the person sending the
16 money had not authorized it?

17 A. Correct.

18 Q. And the bank wasn't as interested in whether the person
19 receiving the money was authorized to receive it?

20 A. Correct.

21 Q. Do you recall answering some questions about a hold, a
22 seven-day hold?

23 A. Yes.

24 Q. Do you recall that the day that checks were deposited in
25 April was April 19, 2019?

K1NVTEM1

Finocchiaro - redirect

1 A. It was April 19th, 2019.

2 Q. There's a seven-day hold, right?

3 A. That is correct.

4 Q. And so that would be, I think -- seven days -- April 26th?

5 A. That is correct.

6 Q. Okay.

7 MR. BHATIA: Mr. Magliocco, could you pull up

8 Government Exhibit 102 and page 3 of that document.

9 (Continued on next page)

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Finocchiaro - redirect

1 (Pause)

2 MR. BHATIA: Excuse me. It is the document with Bates
3 number 958 at the bottom.

4 THE COURT: This is a part of Exhibit 102?

5 MR. BHATIA: That is right.

6 BY MR. BHATIA:

7 Q. If I can direct your attention to the bottom of this page,
8 to the section titled, "Withdrawals and other Debits.

9 Do you recall testifying yesterday about the account
10 035 -- 0351 is the Friend or Fraud account?

11 A. That is correct.

12 Q. And 5580 is Ari Teman's personal account?

13 You can take a look at the exhibits in front of you,
14 Government Exhibits 107 or 108.

15 (Pause)

16 A. 5580 is the personal account for Ari Teman.

17 Q. OK. So the hold on the \$297,000, the balance of that was
18 released on April 26, 2019, right?

19 A. That is correct.

20 Q. That's the date he was able to -- that was the date most of
21 those funds were available?

22 A. That is correct.

23 Q. And is it right that on this document if it shows that on
24 April 26, 2019, the day those funds were available, there was
25 that day a transfer of \$225,000 to the Friend or Fraud account?

Klndtem2

Finocchiaro - recross

1 A. Yes, there was.

2 Q. On that same day there was a transfer of \$3,600 into the
3 Ari Teman's personal account?

4 A. That is correct.

5 Q. And then three days later there is a transfer of 5,500 in
6 the same account?

7 A. That is correct.

8 Q. So those were all within three days of when those funds
9 became available, right?

10 A. The same day and three days later, yes.

11 MR. BHATIA: No further questions, your Honor.

12 THE COURT: All right. Any recross, Mr. Gelfand?

13 MR. GELFAND: Very briefly, your Honor.

14 THE COURT: Of course.

15 RECROSS-EXAMINATION

16 BY MR. GELFAND:

17 Q. The prosecutor just asked you a few minutes ago whether the
18 bank had received information that the checks were not
19 authorized, correct?

20 A. Correct.

21 Q. OK. To be Crystal clear, when you said that the bank got
22 information, is it fair to say that what you mean is that the
23 other banks told you that that's what their customers told
24 you -- told them?

25 A. Correct. We received the return item chargeback indicating

Klndtem2

Finocchiaro - recross

1 that they were counterfeit and in breach of warranty.

2 Q. As opposed to Bank of America making an independent
3 determination of whether that was true or not true?

4 A. We received the information from the corresponding
5 financial institution, and we rely on that information to be
6 factual.

7 Q. Do you know someone named Cheryl Harrison?

8 A. I do, yes.

9 Q. Who is Cheryl Harrison?

10 A. She is in our compliance and regulatory compliance filing
11 department.

12 Q. And what is compliance within Bank of America's context?

13 MR. BHATIA: Objection, your Honor. Scope.

14 THE COURT: Sustained. Beyond the scope.

15 MR. GELFAND: Your Honor, may we approach for
16 additional context? May we approach because I think --

17 THE COURT: For a brief sidebar, yes.

18 (Continued on next page)

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Finocchiaro - recross

1 (At the sidebar)

2 THE COURT: What is the issue?

3 MR. GELFAND: Your Honor, the government disclosed
4 over the weekend to us, and we actually disclosed to the
5 government, correspondence from Cheryl Harrison, who is a Bank
6 of America employee, consisting of a single email between her
7 and Ariel Reinitz on May 28th of 2019, and the email
8 correspondence directly relates to a question that the
9 prosecutor asked on redirect about what information the bank
10 got essentially as to whether these were authorized or not.
11 The information in the course of the email that was maintained
12 by the bank and provided to this witness -- and then, by
13 extension, to the government and then to us -- clearly
14 indicates that these were authorized by GateGuard's customers.

15 THE COURT: This is out of bounds for several reasons.
16 First of all, it is out of the timeframe that the witness is
17 speaking about.

18 Second of all, this is hearsay. This is a
19 communication from Ariel Reinitz, the attorney for the
20 government, to somebody else from the bank after the fact. She
21 is not part and parcel of some close investigation, and that is
22 not what the redirect is about. You are at liberty to pursue
23 this with Mr. Reinitz. You are at liberty to pursue it with
24 the other bank employee. But this witness is essentially a
25 custodian of records who is explaining the bank's holding

K1ndtem2

Finocchiaro - recross

1 processes. The follow-along conversation between a lawyer for
2 Mr. Teman and somebody else are well outside the scope of the
3 inquiry that has been put here and are outside of the witness'
4 competence to address. So, sustained.

5 MR. GELFAND: OK. Thank you, your Honor.

6 (Continued on next page)

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Finocchiaro - recross

1 (In open court)

2 THE COURT: At the sidebar, I continued to sustain the
3 objection.

4 Mr. Gelfand.

5 BY MR. GELFAND:

6 Q. Finally, Ms. Finocchiaro, the prosecutor asked you
7 questions about whether or not the bank was insured by the
8 FDIC, correct?

9 A. Correct.

10 Q. OK. And to be clear, you also testified -- I just want to
11 make sure we are not confused on terminology -- that some of
12 these checks were processed through the Federal Reserve System,
13 correct?

14 A. Correct.

15 Q. And the FDIC and the Federal Reserve system are two totally
16 separate concepts, correct?

17 A. Correct.

18 Q. OK. Just to be clear, when you testified that these checks
19 were processed through the Federal Reserve System, to the
20 extent you know, that's basically just a way that banks in
21 American banking process checks; they don't independently
22 confirm the veracity of what is on checks or anything like
23 that, correct?

24 A. Correct.

25 MR. GELFAND: Your Honor, I have no further questions.

K1ndtem2

1 Thank you.

2 THE COURT: All right. Any reredirect?

3 MR. BHATIA: No, your Honor.

4 THE COURT: All right. Ms. Finocchiaro, you may step
5 down. Your testimony is complete. Thank you.

6 (Witness excused)

7 THE COURT: Government, please call your next witness.

8 MR. BHATIA: The government calls Elie Gabay.

9 THE COURT: Ladies and gentlemen, while we wait for
10 the next witness, if you want to stretch your legs, feel free
11 to do so, or not.

12 ELIE GABAY,

13 called as a witness by the government,

14 having been duly affirmed, testified as follows:

15 THE CLERK: Please be seated.

16 State and spell your full name for the record.

17 THE WITNESS: Elie Gabay, E-l-i-e G-a-b-a-y.

18 THE COURT: All right. Good morning, Mr. Gabay. I
19 will ask you to please speak close to the mic, and keep your
20 voice up so that everyone can hear you in this old large
21 courtroom.

22 Counsel, you may inquire.

23 BY MR. BHATIA:

24 Q. Mr. Gabay, where do you work?

25 A. Coney Management.

Klndtem2

1 Q. And what is your title there?

2 A. Managing director.

3 Q. How long have you had that title?

4 A. About eleven years.

5 Q. And what kind of work does Coney Management do?

6 A. Manages commercial properties.

7 THE COURT: A little louder, please.

8 A. Manages commercial properties.

9 Q. And about how many buildings does it manage?

10 A. About 60.

11 Q. And as a general matter, where are the properties that it
12 manages?

13 A. In New York City.

14 Q. You are a managing director there. What are your
15 day-to-day responsibilities?

16 A. Overseeing the management of the properties on site and
17 overseeing the back office functions involving managing those
18 properties.

19 Q. In 2018, what role did you have in managing and overseeing
20 the financial activity of those entities?

21 A. The same as I have today. Overseeing income, rents,
22 receipts coming in, expenses, checks going out to vendors.

23 Q. Do you generally oversee the financial activity of those
24 entities?

25 A. Yes.

Klndtem2

1 Q. And does that involve approving expenses?

2 A. Yes.

3 Q. Do you also have -- what role do you have involving
4 contracts?

5 A. I negotiate contracts when necessary.

6 Q. And are you also authorized to approve them?

7 A. Yes.

8 Q. What role do you have in coordinating vendors?

9 A. I coordinate with vendors in all matters involving the
10 management of the properties.

11 Q. OK. And what role do you have involving the checking
12 accounts of those companies?

13 A. I'm a signer on some of them, and I oversee the monthly
14 reporting that we do when we reconcile those bank accounts
15 against our books.

16 Q. Are you familiar with the building at 518 West 204 Street?

17 A. Yes.

18 Q. Where is that generally?

19 A. In northern Manhattan.

20 Q. And how are you familiar with that building?

21 A. We manage the building.

22 Q. So all the things you talked about managing, do you also do
23 those for 518 West 204?

24 A. Yes.

25 Q. And are you familiar with 518 West 204 LLC?

Klndtem2

1 A. Yes.

2 Q. What is the LLC?

3 A. It's the entity that owns the property 518 West 204 Street.

4 Q. Does Coney Management itself own 518 West 204 LLC?

5 A. No.

6 Q. Who owns the company?

7 A. It's made up of a group of partners, individuals and some
8 entities.

9 Q. What is the relationship between Coney Management, where
10 you work, and the corporation 518 West 204 LLC?

11 A. We are the managing agent. Coney Management is the
12 managing agent of 518 West 204.

13 Q. What does it mean to be a managing agent?

14 A. To do all the tasks that I described earlier, to manage the
15 day-to-day operations, to oversee all financial matters
16 relating to the property.

17 Q. Do you see anyone in this courtroom who you recognize from
18 your previous business dealings?

19 A. I do.

20 Q. Who do you recognize?

21 A. Ari Teman, standing up there.

22 Q. And would you please identify Mr. Teman by an article of
23 clothing he is wearing?

24 A. A blue suit, purplish tie.

25 MR. BHATIA: Your Honor, may the record reflect that

K1ndtem2

1 that witness has identified the defendant?

2 THE COURT: The record will so reflect.

3 BY MR. BHATIA:

4 Q. How did you first meet Mr. Teman?

5 A. I had met him at some trade shows relating to some of the
6 products that he was selling.

7 Q. Around when do you think you met him?

8 A. Sometime in 2016, 2017, around that time.

9 Q. You said he was selling some products. What products was
10 he selling?

11 A. He was selling technology -- my first discussions with him
12 were relating to technology to identify illegal subleases.

13 Q. What was the name of the product he was selling?

14 A. Sublet Spy.

15 Q. Did you later enroll -- did you later subscribe to Sublet
16 Spy?

17 A. I did.

18 Q. And did there come a time when you purchased another
19 product from Mr. Teman?

20 A. Yes.

21 Q. And what was that product?

22 A. GateGuard.

23 Q. What does GateGuard sell?

24 A. GateGuard is an intercom system which is placed at the
25 entrance door of commercial properties, and it was supposed to

Klndtem2

1 add an additional layer of verification and identification for
2 any parties trying to come into the building who are
3 unauthorized.

4 Q. What role does an intercom have in the safety of a building
5 at its entrance?

6 A. It makes sure that only people that are authorized to enter
7 the building enter the building and keeps anyone else out by
8 not buzzing the door unless either they are buzzed in from
9 somebody upstairs or they have a code or something like that.

10 Q. When did you first hear about GateGuard?

11 A. Sometime in late 2016, early 2017.

12 Q. And did you -- did there come a time when you met Mr. Teman
13 to discuss buying an intercom?

14 A. Yes.

15 Q. Describe that meeting.

16 A. We first discussed it at a trade show where he was showing
17 me some of the functionality and how it worked. We later had a
18 meeting in my office with some other members of my team in
19 order to get a little bit more intimately acquainted with how
20 it works and just get to know it better.

21 Q. Based on -- fair to say he gave you the sales pitch?

22 A. Yes.

23 Q. So after the sales pitch, what did you tell Mr. Teman about
24 moving forward with GateGuard?

25 A. We were considering rolling it out on a large scale across

Klndtem2

1 a big chunk of our properties, but because it was a fairly new
2 product, we would want to test it out first to see how it
3 worked.

4 Q. Just taking a step back for a minute. Where was that
5 meeting with Mr. Teman?

6 A. There was a meeting at the trade show, and that may have
7 been in Manhattan, I think, but the meeting in our office was
8 in Brooklyn.

9 Q. OK. So when you were talking about rolling it out on a
10 larger scale, what commitments did you make to Mr. Teman?

11 A. There were no commitments made at the meeting. It was
12 conceptual: This is what we think. This is how we would like
13 to see it happen.

14 Nothing was firm partially because Mr. Teman said that
15 he had a newer version that was in development which he needed
16 to fly to some other place in order to oversee the
17 manufacturing of, so the final product wasn't really in place
18 yet.

19 Q. And was there -- did you have a need for a particular
20 intercom before those later models would be available?

21 A. Yes. There came a time when we had an immediate need for
22 an intercom system at 518 West 204th Street, and that happened
23 during the time that we were having discussions. And rather
24 than put in a temporary intercom and wait for the updated model
25 to come out, we decided to talk to Mr. Teman about putting a

K1ndtem2

1 system in since we had an immediate need.

2 Q. So the later model might come out later but there was an
3 immediate need for an intercom now?

4 A. Right. So we would put this one in on a temporary basis
5 and eventually swap it out.

6 Q. OK. Mr. Gabay, I'd like to direct your attention to
7 Government Exhibits 412 through 418. They are in a binder to
8 your right. If you could take -- to your left, I'm sorry. My
9 right. If you could take a look at 412 through 418 and look up
10 at me for a moment when you are finished.

11 (Pause)

12 A. 412?

13 Q. 412 through 418.

14 (Pause)

15 Mr. Gabay, just to give you an idea, I am going to ask
16 you if you recognize those documents. That is my question for
17 now.

18 A. Yes, I do.

19 Q. OK. How do you recognize 412 through 418?

20 A. These are emails that either I sent or I received.

21 MR. BHATIA: OK. And, your Honor, the government
22 offers Government Exhibits 412 through 418.

23 THE COURT: I think he needs to be more precise about
24 who the emails were with.

25 MR. BHATIA: OK.

Klndtem2

1 Q. Who were the emails with?

2 All of those emails were to or from you, right?

3 A. Yes.

4 Q. And who were the emails with?

5 A. 412 is an email from -- which is auto-generated from the
6 intercom panel, and the others are from Ari Teman.

7 Q. OK. Mr. Gabay -- your Honor, the government now offers
8 Exhibits 412 through 418.

9 THE COURT: Any objection?

10 MR. GELFAND: No, your Honor.

11 THE COURT: They are all received.

12 (Government's Exhibits 412 through 418 received in
13 evidence)

14 MR. BHATIA: Mr. Magliocco, I would like to publish
15 Government Exhibit 412.

16 Mr. Gabay, we are going to call up an exhibit for you.

17 THE COURT: Can you enlarge the exhibit? The jury is
18 struggling with it a little bit. Thank you.

19 Q. Mr. Gabay, who is this email from?

20 A. This email is from the intercom system.

21 Q. And who is this email to?

22 A. To me.

23 Q. As a general matter, what information are you getting in
24 this email?

25 A. It's a notification that Ana Esterg, from Apartment 22 at

K1ndtem2

1 518 West 204th Street, got a buzz but didn't log into the
2 apartment.

3 Q. Does this message tell you that the intercom is working?

4 A. Yes.

5 Q. Did you ever receive an invoice related to this purchase?

6 A. Yes.

7 Q. I would like to direct your attention to Government Exhibit
8 413.

9 A. 413.

10 Q. So I would like to direct your attention to the top of this
11 email.

12 A. OK.

13 Q. Who is this email from?

14 A. Ari Teman.

15 Q. And who is it to?

16 A. To me.

17 Q. What is the date of this email?

18 A. January 19, 2018.

19 Q. That is the same day as you got the email saying that your
20 device is working, right?

21 A. Yes.

22 Q. And so --

23 A. Yeah, sorry.

24 Q. Is there an attachment to this email?

25 A. There is.

Klndtem2

1 Q. And is that an invoice?

2 A. Yes.

3 Q. I would like to direct your attention to page 3 of this
4 document.

5 You can follow along on the screen, if that is
6 helpful. We will blow it up for you.

7 So I would like to first direct your attention to the
8 top of this email -- of this invoice, I should say.

9 Who is this email from -- who is this invoice from?

10 A. GateGuard Inc., a division of Teman.

11 Q. And is it to you?

12 A. It has my email address on it, but it's got another entity
13 on it.

14 Q. This is the invoice that was emailed to you?

15 A. Yes.

16 Q. What is the balance on this invoice?

17 A. \$3,600.

18 Q. And if we go further down that page, we can take a look at
19 what you are being invoiced for.

20 What is the first entry on this invoice?

21 A. GateGuard Version 1 Panel.

22 Q. What is it listed here in the description?

23 A. "To be credited to Panel 2.0 monthly fees when installed."

24 Q. And the cost is \$3,600?

25 A. Yes.

Klndtem2

1 Q. And in the far right column, it says, "Line Total."

2 You are not being charged for anything else, right?

3 A. That is correct.

4 Q. The total value of this invoice was \$3,600, right?

5 A. Yes.

6 Q. What did you think you were buying when you received this
7 invoice?

8 A. I was buying the version one panel as a temporary solution,
9 and eventually it will be credited against the newer panel once
10 that came in.

11 Q. I would like to direct your attention to the bottom of this
12 page now.

13 In the bottom left corner, there is something that
14 says, "Terms." It says, "Buyer sets Terms & Conditions at
15 <https://GateGuard.xyz>." Do you see that?

16 A. I do.

17 Q. Did you click on that link?

18 A. I don't recall clicking on that link.

19 THE COURT: Sorry. A little louder, please.

20 A. I don't recall clicking on that link.

21 Q. Why not?

22 A. Why don't I recall it?

23 Q. Do you recall why you might not have clicked on that link?

24 A. No.

25 Q. I would now -- did there come a time when you paid for

Klndtem2

1 this -- when you paid this invoice?

2 A. Yes.

3 Q. After receiving this invoice, did there come a time when
4 you did go to Mr. Teman's website?

5 A. Yes.

6 Q. And when was that?

7 A. It was later on, as we were negotiating the larger
8 agreement.

9 Q. So that was -- this is just an invoice for one device, is
10 that right?

11 A. Correct.

12 Q. When you received this invoice, what did you think that you
13 were buying with just this invoice?

14 A. Just that one device.

15 Q. OK. At the same time, were there conversations about other
16 purchases?

17 A. There were conversations.

18 Q. What were those conversations?

19 A. Discussions and negotiations about how to structure the
20 terms of the larger purchase.

21 Q. I'll direct your attention to Government Exhibit 414, and
22 there is an email message on the third page of that document.

23 A. Do I still need this binder?

24 Q. You don't need the binder.

25 In this message, Mr. Teman says: "Here is the form to

Klndtem2

1 complete the order for the 10 Version 2.0 devices you put into

2 PropertyPanel.xyz," and then he later includes a hyperlink.

3 What was Mr. Teman sending you?

4 A. He was sending me an online order form.

5 Q. And did you go to that link?

6 A. I believe so.

7 Q. And did there come a time after going to that link when you

8 saw so-called "Terms & Conditions" on Mr. Teman's website?

9 A. Yes.

10 Q. When did you first see those terms and conditions?

11 A. It must have been around the time of this email.

12 Q. What was your reaction to seeing them?

13 A. I was pretty surprised by many of them and felt that they

14 needed to be negotiated.

15 Q. What about them seemed surprising?

16 A. They seemed very one-sided and aggressive in nature.

17 Q. And at the time you saw those terms, did you feel that you

18 had been bound by them?

19 A. No.

20 Q. Did you feel you had agreed to those terms?

21 A. No.

22 Q. Why not?

23 MR. GELFAND: Your Honor, I object to the question

24 about the way he felt.

25 THE COURT: Sustained.

K1ndtem2

1 Q. In your mind, were you bound by those terms?

2 A. No.

3 MR. GELFAND: The same objection.

4 THE COURT: Sustained.

5 Q. In your mind, did you agree to those terms?

6 MR. GELFAND: I am going to object, your Honor.

7 THE COURT: Sustained.

8 Q. Did there come a time when you expressed your views about
9 those terms and conditions to Mr. Teman?

10 A. Yes.

11 Q. And so going back to this document, I will direct your
12 attention to an email message at the bottom of the first page,
13 dated January 23, 2018. You wrote here: "Section 5K and 5L or
14 your terms and conditions are pretty brutal. I stopped reading
15 after I saw them. I don't usually get nitpicky but we need to
16 discuss these."

17 What were you telling Mr. Teman?

18 A. I was telling him that we needed to discuss the terms and
19 conditions.

20 Q. And was that a reference to a page on his website?

21 A. Yes.

22 Q. What did you mean, that they were pretty brutal?

23 A. I'd have to see them to remember it, but judging by my
24 language, they seemed one-sided and very aggressive.

25 Q. When you said that they were pretty brutal, were you

Klndtem2

1 conveying anything about whether you agreed to those terms?

2 A. My next sentence says that we need to discuss them, so I
3 meant we need to negotiate them.

4 Q. What was the date of that email to Mr. Teman?

5 A. January 23, 2018.

6 Q. And at that point Mr. Teman had installed a GateGuard
7 device at 518 West 204, right?

8 A. Yes.

9 Q. I'll direct your attention to an email above this one that
10 says -- let's pull it up. He wrote back: "Sure. Call me."

11 Did you have a subsequent call with Mr. Teman?

12 A. Yes.

13 Q. On that call, what, if anything, did Mr. Teman say about
14 payment terms?

15 A. I don't recall specifics about that conversation.

16 Q. On that conversation, did you commit to abiding by the
17 terms and conditions?

18 MR. GELFAND: Your Honor, objection. The witness has
19 testified he doesn't recall.

20 THE COURT: Overruled.

21 You may answer it.

22 THE WITNESS: Repeat the question.

23 BY MR. BHATIA:

24 Q. On that call that says, "Sure, call me," did you say
25 anything about committing to the terms and conditions?

K1ndtem2

1 A. I don't think so, no.

2 THE COURT: Please speak louder.

3 THE WITNESS: Sure.

4 THE COURT: Just repeat the answer.

5 A. I don't think so, no.

6 Q. At any time did you have a phone call with Mr. Teman where
7 you told him you agreed to the terms and conditions?

8 A. No.

9 Q. So you didn't have one after this either?

10 A. No.

11 Q. OK. Did there come a time when you actually paid the
12 invoice for -- when you actually paid the invoice that you
13 testified about earlier today?

14 A. Yes.

15 Q. So I'll direct your attention now to Government Exhibit
16 146.

17 MR. BHATIA: Your Honor, at this point, I think we
18 need to offer that into evidence.

19 If I could have one moment?

20 One moment, your Honor.

21 (Pause)

22 MR. BHATIA: Your Honor, the government offers into
23 evidence, pursuant to a stipulation that we read off yesterday,
24 Exhibits 141 through 146.

25 THE COURT: Any objection?

Klndtem2

1 MR. GELFAND: No objection.

2 THE COURT: Those are all received.

3 (Government's Exhibits 141 through 146 received in
4 evidence)

5 BY MR. BHATIA:

6 Q. Mr. Gabay, I would like to direct your attention to
7 Government Exhibit 146. We'll put it up on the screen.

8 On the top right here is a check image, is that right?

9 A. Yes.

10 Q. Do you recognize this check?

11 THE COURT: Can you enlarge it, please, for the
12 benefit of the jury?

13 A. I do.

14 Q. And is this check issued by 518 West 204 LLC?

15 A. Yes, it is.

16 Q. Is this the check that you issued for the invoice that you
17 had received?

18 A. Yes.

19 Q. When you issued this check, what were you agreeing to do
20 with GateGuard? What were you agreeing to purchase from
21 GateGuard?

22 A. The intercom panel.

23 Q. Had you spoken on the phone with Mr. Teman about GateGuard?

24 A. I had.

25 Q. And you described meetings with GateGuard?

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1 A. Yes.

2 Q. During those phone calls and meetings, did Mr. Teman tell
3 you anything about authority to draw checks on behalf of 518
4 West 204 LLC?

5 A. No.

6 Q. Did he tell you anything about a ten-year commitment to
7 paying him monthly fees?

8 A. No.

9 Q. At the time you issued this check, had Mr. Teman told you
10 anything about paying a device removal fee if you removed the
11 device?

12 A. No.

13 Q. This check is dated January 31, 2018, is that right?

14 A. Yes.

15 Q. At the time you paid this check, had you -- did you believe
16 that you were buying a GateGuard intercom?

17 A. Did I what?

18 Q. Did you believe that you were purchasing and owning a
19 GateGuard intercom?

20 A. Yes.

21 Q. Did you believe that you would be subject to a fee if you
22 decided to remove the intercom and do something else?

23 A. No.

24 Q. At the time you issued this check, what commitments had you
25 made to GateGuard about future purchases?

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1 A. There were no commitments, there were just negotiations.

2 Q. At the time you issued this check, were you giving Mr. --
3 had you given Mr. Teman authority to draw checks from your
4 accounts?

5 A. No.

6 Q. If Mr. Teman had said I'd like authority to issue checks on
7 your behalf, why don't you give me a check, what would you have
8 said?

9 MR. GELFAND: Objection, your Honor. It calls for
10 speculation.

11 THE COURT: Overruled.

12 THE WITNESS: That means I can answer it?

13 THE COURT: You may answer it. Thank you.

14 A. I would have said no.

15 Q. Why would you have said no?

16 A. Because we don't authorize anyone to draw on our
17 accounts -- any of our vendors to draw funds from our accounts
18 other than specific categories, such as utilities or mortgages.

19 Q. So what are the categories where you do allow people to
20 draw funds?

21 A. Only mortgage payments or utilities.

22 Q. And why do you not let other people draw funds from your
23 accounts?

24 A. That's just the way our policy is structured. We like to
25 see invoices come in. We like to authorize each payment and go

Klndtem2

1 through our accounts payable process.

2 Q. Is there a practical effect -- is there a practical reason
3 you don't want people automatically drawing funds from that
4 account?

5 A. Practical reason? I don't understand what you mean.

6 Q. Is there a reason you want to manually approve expenses
7 going out of that account?

8 A. Yeah, to make sure that they are authorized.

9 Q. At the time you paid this check, did you have any contract
10 with Mr. Teman?

11 A. No.

12 Q. And at the time you issued this check, had you signed
13 anything called the terms and conditions?

14 A. No.

15 Q. After paying for this first device, did you have other
16 conversations with Mr. Teman about other purchases after paying
17 this?

18 A. Yes.

19 Q. What was the substance of those conversations?

20 A. It was negotiating the rollout of Version 2.0 across
21 multiple properties.

22 Q. I'll direct your attention to Government Exhibit 415, which
23 we will pull up on the screen for you.

24 I will direct your attention to an email at the bottom
25 of the first page.

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1 We can scroll up a little bit, and we can see this is
2 from -- this is a message from Ari Teman?

3 A. Yes.

4 Q. And it is an email to you?

5 A. Yes.

6 Q. And who is Yoni Irom?

7 A. That is an attorney.

8 Q. OK. In this message -- now go to the contents of it --
9 what was Mr. Teman sort of conveying to you?

10 THE COURT: Let's let the jury read the message first.

11 MR. BHATIA: OK.

12 (Pause)

13 THE COURT: OK. Go ahead.

14 BY MR. BHATIA:

15 Q. At this point, is Mr. Teman giving you a proposal?

16 A. He's directing me to fill out some sort of template to go
17 through the process of finalizing the order for the 20 -- for
18 the units for the 20 buildings.

19 Q. Now, if we go further up this page on this document, you
20 send a message to Mr. Teman, and in that message you write --
21 and now we have it up here -- you write: "Proposed changes to
22 terms and conditions attached. Let's discuss once you've had a
23 chance to review."

24 What were you sending Mr. Teman?

25 A. Red lines terms and conditions.

Klndtem2

1 Q. So let's turn to page 3 of this document.

2 These are the same terms and conditions that you
3 described as pretty brutal earlier?

4 A. Yes.

5 Q. So on page 3 of this document -- if we pull it up. You can
6 zoom in on the text on this page.

7 Can you read the top three lines?

8 A. "Terms & conditions, GateGuard Inc. Last revised:
9 November 30, 2017, 3:30 p.m."

10 Q. Are these the terms and conditions that you had seen
11 before?

12 A. I believe so.

13 Q. And where did you get this document from?

14 A. From his website.

15 Q. And what you are sending him, is that like a Microsoft Word
16 document?

17 A. Yes.

18 Q. Did you send it with any edits in this document?

19 A. I did.

20 Q. When you sent it to him, why did you make edits?

21 A. Because I felt the terms and conditions were brutal.

22 Q. And did you believe that these terms and conditions had any
23 effect on the intercom that you had already purchased?

24 A. Had any effect?

25 Q. Were these terms and conditions related to that earlier

Klndtem2

1 intercom?

2 A. I didn't think so, no.

3 Q. What intercoms might these terms and conditions relate to?

4 A. The ones that we were negotiating to purchase.

5 Q. Turn your attention now to the seventh page of this
6 document, and I will direct your attention to a paragraph right
7 under the heading 5.

8 Pull it up.

9 Fair to say this is a long document?

10 A. Yes.

11 Q. OK. So this section is called "Orders and Fees," right?

12 A. Yes.

13 Q. And, in quotes, "Pricing"?

14 A. Yes.

15 Q. You made two edits here, right?

16 A. I did.

17 Q. What is the edit -- the second edit further down this page,
18 you struck some language. We don't need to get into legalese,
19 but what would you say that you were striking out here?

20 A. I was striking out the language that enabled GateGuard to
21 increase pricing at a rate of 100 percent per year.

22 Q. Was that an unusual provision for you?

23 A. Highly unusual.

24 Q. Why? Why did you think that might be an issue?

25 A. I think it would be an issue if pricing can be doubled on

Klndtem2

1 an annual basis at his discretion.

2 Q. Further up this page, there is a URL. Do you see that URL?

3 A. I do.

4 Q. And did you click on that link?

5 A. I don't recall.

6 Q. Do you recall ever seeing another Web page that had similar
7 conditions?

8 A. Similar conditions to what?

9 Q. Do you recall ever seeing another page like a Terms &
10 Conditions?

11 A. No.

12 Q. OK. To the best of your memory, did Mr. Teman ever draw
13 your attention to that website?

14 A. No.

15 Q. And to the best of your memory, did he ever send you a copy
16 of that website?

17 A. A copy of the website?

18 Q. Did he ever send you the text of what's in that link?

19 A. No, I don't think so.

20 Q. By sending back these terms and conditions, were you
21 agreeing to them?

22 A. No. It was a negotiation.

23 Q. You would say this is mid-negotiation, right?

24 A. Yes.

25 Q. Going back to your email now, so that is page 1 of this

K1ndtem2

1 document, towards the top.

2 (Pause)

3 THE COURT: Do you need to put it up on the screen.

4 MR. BHATIA: We will play it.

5 Q. In this email where you attached these terms and
6 conditions, you wrote: "Proposed changes to terms and
7 conditions attached. Let's discuss once you've had a chance to
8 review."

9 By saying you wanted to discuss, were you conveying
10 anything about whether you had already agreed to these
11 conditions?

12 A. No.

13 Q. What did you mean to tell Mr. Teman about the terms?

14 A. That I had proposed some changes and we should discuss
15 further.

16 Q. And you didn't agree to them as is?

17 A. Absolutely not.

18 Q. Did you hear from Mr. Teman after you sent this email?

19 A. I believe we spoke, yes, and I think in response to some of
20 my comments.

21 Q. You continued to talk to Mr. Teman about the GateGuard --
22 about buying more GateGuard product, is that right?

23 A. I did.

24 Q. Did there come a time when you decided that you did not
25 want to purchase more GateGuard intercoms?

K1ndtem2

1 A. Yes.

2 Q. What led you to that conclusion?

3 A. We were having some challenges with the unit that had been
4 installed, and during the troubleshooting process I
5 communicated with Mr. Teman that until some of these issues
6 were resolved, we'd like to put a hold on any further
7 discussions on the larger order.

8 Q. Let's just take a step back.

9 You said that you had some issues with the device.
10 What kind of issues?

11 A. Connection issues. We got some feedback from tenants that
12 either felt like they weren't able to get in when they needed
13 to get in or weren't able to buzz people in when they needed to
14 buzz people in. The last piece which I remember was that there
15 was a connectivity issue where the unit wasn't working as
16 promised.

17 Q. How many times a day would you say an intercom is used in
18 one of your buildings?

19 A. It depends on the size of the building.

20 Q. If there were ten tenants in the building, how many times a
21 day do you think the intercom would be used?

22 A. It would be tough to say. It depends on how many guests
23 they have and so many other factors.

24 Q. It could be dozens of times?

25 A. Yes.

Klndtem2

1 Q. So is it a problem for you if the intercom is not working
2 properly?

3 A. Yes, it is.

4 Q. And did tenants complain to you?

5 A. Yes.

6 Q. And did you relay complaints to Mr. Teman?

7 A. Yes.

8 Q. What did he say in response to those complaints?

9 A. He worked on the issues that were coming up, and we worked
10 together in order to resolve them.

11 Q. Did you find that despite his work, there were still
12 problems coming up?

13 A. Yes.

14 Q. And ultimately what happened to your discussions about
15 buying more GateGuard intercoms?

16 A. When I relayed the intention to put the larger order on
17 hold, I got a very nasty email from Mr. Teman and the
18 relationship deteriorated after that.

19 Q. I would like to direct your attention to Government Exhibit
20 416. And at the top of this page, there is a message between
21 you and Mr. Teman.

22 You wrote: "Updated feedback on my end below.

23 "'Given all of the issues we are having with Teman's
24 system, I am very hesitant to move forward with him. I think
25 we need to put this entire project on hold. And wait.'"

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1 What were you relaying to Mr. Teman?

2 A. I was relaying to him that due to the challenges and the
3 issues that we had with the system, we would be suspending any
4 further discussion about the larger order until they were
5 resolved.

6 Q. You are describing feedback on your end and then quoting
7 some language. Are you quoting someone else here?

8 A. Just probably quoting just the general feedback that I'm
9 getting.

10 Q. So in the office there was a conclusion to put this on
11 hold?

12 A. Yeah.

13 Q. It was not just your decision?

14 A. No.

15 Q. After --

16 THE COURT: Counsel, I am looking for a good moment
17 for a mid-morning break. Is this it, or would you like to go
18 on a little longer?

19 MR. BHATIA: I have a few more questions on this top.

20 THE COURT: Very good.

21 MR. BHATIA: And then I will let you know.

22 THE COURT: Keep going.

23 BY MR. BHATIA:

24 Q. Did you ever -- after saying that you were hesitant to move
25 forward, did you ever buy any intercoms?

Klndtem2

1 A. Did I ever?

2 Q. After sending this message, did you buy any other
3 intercoms -- intercoms from Mr. Teman?

4 A. No.

5 Q. OK. Did you buy anything else from Mr. Teman?

6 A. No.

7 MR. BHATIA: Your Honor, this might be a good point
8 for a break.

9 THE COURT: All right. Ladies and gentlemen, we're
10 going to take our mid-morning break. Mr. Smallman will come
11 get you in 15 minutes.

12 Enjoy your break and, as always, do not discuss the
13 case.

14 (Continued on next page)

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1 (Jury not present)

2 THE COURT: All right. The witness may step down.

3 Counsel, anything to raise before we take our break?

4 MR. BHATIA: No, your Honor.

5 THE COURT: All right. I will see you just before the
6 jury comes back. Thank you. Have a good break.

7 (Recess)

8 (Jury not present)

9 THE COURT: All right. Let's get the witness and the
10 jury.

11 Government counsel, so that I don't have to keep
12 reminding the witness, do encourage him to speak up. He speaks
13 very softly.

14 And government counsel, to the extent that -- there
15 you go, here he is. Please repeatedly just keep your voice up
16 and speak right into the mic.

17 May I just suggest to the government table, given the
18 size of some of the type on some of the documents, so that I
19 don't have to keep interjecting, as a general matter, let's
20 blow up the relevant language so the jury can see it without
21 straining. Thank you.

22 MR. BHATIA: Understood.

23 (Continued on next page)

24

25

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1 (Jury present)

2 THE COURT: All right. Welcome back, ladies and
3 gentlemen.

4 Please be seated.

5 Mr. Gabay, I will remind you that you are still under
6 oath.

7 And, counsel, you may inquire.

8 BY MR. BHATIA:

9 Q. Mr. Gabay, to be clear, were there problems with the one
10 GateGuard device that you owned?

11 A. Yes.

12 Q. There were problems with the one at 518 West 204?

13 A. Yes.

14 Q. What were those problems?

15 A. We were having issues connecting. There were a variety of
16 issues with getting tenants to use it properly or get it to run
17 the way we needed it to run.

18 Q. Did the tenants seem upset about it?

19 A. They did.

20 Q. And they were relaying those concerns to you?

21 A. Yes.

22 Q. And having a faulty intercom, does that also lead to
23 getting complaints with the city?

24 A. Yes.

25 Q. It can be a big problem for you, is that right?

Klndtem2

1 A. Yes.

2 Q. And did you relay those concerns to Mr. Teman?

3 A. I did.

4 Q. These were reoccurring problems, is that right?

5 A. Yes.

6 Q. Ultimately, was he able to stop the problems from
7 reoccurring?

8 A. Many of them were taken care of. The connectivity issues
9 were still not resolved.

10 Q. Connectivity means the ability of the intercom -- the
11 ability of the intercom to connect to the Internet?

12 A. Yes, and for us to connect to the intercom remotely to
13 update or --

14 Q. Is that the main purpose of the intercom, as far as you can
15 tell?

16 A. No, that's not the main purpose.

17 Q. Is it an important part of the product?

18 A. Yes.

19 Q. And it wasn't working?

20 A. Correct.

21 Q. And you told Mr. Teman, right?

22 A. Yes.

23 Q. And you said -- you kept having these problems?

24 A. Yes.

25 Q. Would you describe yourself as a satisfied customer?

Klndtem2

1 A. No.

2 Q. Did there come a time after the first device when you
3 bought more of them?

4 A. No.

5 Q. Why not?

6 A. Because we weren't happy with the first one.

7 Q. You sent over -- you testified about some edits you made to
8 the terms and conditions.

9 A. Yes.

10 Q. As part of your negotiations, right?

11 A. Yes.

12 Q. And at the time -- at any time, did you ever have an
13 agreement with Mr. Teman?

14 A. About what?

15 Q. About these terms and conditions.

16 A. No.

17 Q. Did you ever have any agreement about purchasing more
18 devices?

19 A. No.

20 Q. Did you feel that you had any agreement -- excuse me.

21 Did you have any agreement beyond buying the one
22 device that you paid for?

23 MR. GELFAND: Objection, your Honor.

24 THE COURT: One moment.

25 (Pause)

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1 THE COURT: Overruled.

2 You may answer.

3 THE WITNESS: Can you repeat the question?

4 BY MR. BHATIA:

5 Q. Did you have any agreement with Mr. Teman other than paying
6 for the one device that you owned and the invoice that you
7 received?

8 A. No.

9 THE COURT: Wait. Just to be more precise, is the
10 question other than in connection with the first intercom, did
11 he have any agreement with Mr. Teman? Is that the question?

12 That's the way I understood what you were asking, but
13 I want to make sure there is clarity in your question.

14 MR. BHATIA: I mean other than -- let me rephrase the
15 question.

16 THE COURT: Thank you.

17 Q. Mr. Teman installed one intercom in one of your buildings,
18 right?

19 A. Correct.

20 Q. And you paid \$3,600 for that intercom?

21 A. Correct.

22 Q. Did you have any agreement with Mr. Teman beyond him
23 installing the device and you paying \$3,600 for that device?

24 A. No.

25 Q. Did you have any agreement called Terms & Conditions?

K1ndtem2

1 A. No.

2 Q. Did you have any written signature with both of your
3 signatures at the bottom?

4 A. No.

5 Q. Did Mr. Teman at any time, ever, tell you about fees for
6 removing that device?

7 A. Yes, after -- once the relationship deteriorated, he
8 started sending me emails about these fees that I supposedly
9 owed him.

10 Q. Prior to when the relationship deteriorated, when you put
11 that -- is that after you decided to put the negotiations on
12 hold?

13 A. Yes.

14 Q. Prior to that, had Mr. Teman ever told you about a fee for
15 removing a device from your own building?

16 A. Not that I recall.

17 Q. You thought you owned the device -- you owned the device,
18 right?

19 A. Well, it was a temporary device that we owned until the new
20 one would come in.

21 Q. Does it make sense to you to pay a fee to remove your own
22 device from your own building?

23 A. No.

24 Q. Is that something that would have stood out to you if you
25 had agreed to pay that fee?